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83D CONGRESS  
1ST SESSION

# H. R. 4277

146

## IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1953

Mr. MILLER of Nebraska introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

## A BILL

To provide for the health and protection of the citizens of the United States from harmful chemical additives in pesticides.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Pesticides-Residue  
4       Amendment to the Federal Food, Drug, and Cosmetic Act".

5       SEC. 2. Section 201 of the Federal Food, Drug, and  
6       Cosmetic Act is amended by adding at the end thereof the  
7       following new paragraph:

8       “(q) The term ‘pesticide’ means any substance or mix-  
9       ture of substances used in the production, storage, or trans-  
10      portation of food which is intended for preventing, destroy-  
11      ing, repelling, or mitigating any insects, rodents, fungi, or

1 weeds, and other forms of plant or animal life or viruses,  
2 except viruses on or in living man or other animals.”

3 SEC. 3. Section 402 (a) (2) of the Federal Food,  
4 Drug, and Cosmetic Act is amended to read as follows:

5 “(2) if it bears or contains any added poisonous  
6 or added deleterious substance which is unsafe within  
7 the meaning of section 406, except a pesticide, or if  
8 it bears or contains any poisonous or deleterious pesticide  
9 which is unsafe within the meaning of section 407;”.

10 SEC. 4. The Federal Food, Drug, and Cosmetic Act is  
11 amended by adding at the end of section 406 (b) the  
12 following new section:

13 “SEC. 407. (a) Any poisonous or deleterious pesticide  
14 added to a food shall be deemed unsafe for the purposes  
15 of the application of clause (2) of section 402 (a) unless  
16 (1) the quantity thereof does not exceed the limits of a  
17 tolerance prescribed by the Administrator under paragraph  
18 (b) of this section; or (2) the pesticide has been exempted  
19 from the requirement of a tolerance by the Administrator  
20 under paragraph (c) of this section. While a tolerance is  
21 in effect, a food shall be deemed to be adulterated if the  
22 quantity of the pesticide which it bears or contains exceeds  
23 such tolerance. While a tolerance, or an exemption from  
24 a tolerance, is in effect, clause (1) of section 402 (a) shall  
25 not apply.

1       “(b) The Administrator shall promulgate regulations  
2 establishing a tolerance for any poisonous or deleterious  
3 pesticide to the extent necessary to protect the public health.  
4 In establishing such a regulation, the Administrator shall  
5 give appropriate consideration to the necessity for the pro-  
6 duction of an adequate and wholesome food supply. Such  
7 regulations shall be promulgated in the manner prescribed  
8 in paragraphs (d) or (e) of this section.

9       “(c) The Administrator shall promulgate regulations  
10 exempting any pesticide from the necessity of a tolerance  
11 under paragraph (b) of this section when such a tolerance  
12 is not necessary to protect the public health. Such regula-  
13 tions shall be promulgated in the manner prescribed in para-  
14 graphs (d) or (e) of this section.

15       “(d) (1) Any person submitting an application for  
16 the registration of a pesticide under the Federal Insecticide,  
17 Fungicide, and Rodenticide Act of 1947 (7 U. S. C. 135)  
18 may file with the Administrator a petition proposing the  
19 issuance of a regulation establishing a tolerance for the pesti-  
20 cide or exempting the pesticide from a tolerance. The peti-  
21 tion shall contain data showing (i) the name, chemical  
22 identity and composition of the pesticide, (ii) the amount,  
23 frequency and time of application of the pesticide, (iii)  
24 toxicity information, (iv) tests showing the amount of  
25 residue remaining, (v) proposed tolerances for the pesticide,



1 if tolerances are proposed, and (vi) reasonable grounds in  
2 support of the petition.

3 “(2) Within ninety days after filing, the Administrator  
4 shall, after giving due consideration to the data submitted or  
5 otherwise before him and after certification by the Secretary  
6 of Agriculture that the pesticide named in the petition is  
7 useful for the purpose for which the tolerance or exemption  
8 is sought, make public a regulation (a) establishing a toler-  
9 ance for the pesticide named in the petition or (b) exempting  
10 the pesticide from the necessity of a tolerance, unless within  
11 such ninety-day period the person filing the petition requests  
12 that the petition be referred to an advisory committee or if  
13 the Administrator within such period otherwise deems such  
14 referral necessary, in either of which event the provisions  
15 of clause (3) of paragraph (d) of this section shall apply  
16 in lieu hereof.

17 “(3) In the event that the person filing the petition  
18 requests within ninety days after filing that the petition be  
19 referred to an advisory committee, or the Administrator  
20 within such period otherwise deems such referral necessary,  
21 the Administrator shall forthwith submit the petition and  
22 other data before him to an advisory committee to be ap-  
23 pointed in accordance with paragraph (g) of this section  
24 provided that the Secretary of Agriculture has certified that  
25 the pesticide named in the petition is useful for the purpose

1 for which a tolerance or exemption is sought. As soon as  
2 practicable thereafter, but in no event later than sixty days  
3 after such referral, the Committee shall, after independent  
4 study of the data submitted to it by the Administrator and  
5 other data before it, certify a report and recommendations on  
6 the proposal in the petition to the Administrator. Within  
7 thirty days thereafter, the Administrator shall, after giving  
8 due consideration to the data before him including the report  
9 and recommendations of the advisory committee, make public  
10 a regulation (a) establishing a tolerance for the pesticide  
11 named in the petition or (b) exempting the pesticide from  
12 the necessity of a tolerance.

13 “(4) The regulations proposed under clause (2) of  
14 (3) of paragraph (d) of this section will be effective upon  
15 publication.

16 “(5) Within ninety days after publication, any inter-  
17 ested person may file objections specifying with particularity  
18 the changes desired in the regulation and stating reasonable  
19 ground therefor. Copy of the objections shall be served on  
20 the petitioner, if the proposed regulations were issued pur-  
21 suant to a petition. The petitioner shall have two weeks  
22 to reply to the objections. As soon as practicable there-  
23 after, the Administrator shall make public his action in  
24 affirming, modifying or revising the regulation objected to.  
25 Such action shall be effective upon publication. The

1 Administrator shall base his order under this clause or un-  
2 der clause (2) or (3) of paragraph (d) of this section on  
3 substantial evidence of record including any report or rec-  
4 ommendation of an advisory committee and shall set forth  
5 as part of the order detailed findings of fact upon which the  
6 order is based.

7 “(e) The Administrator may at any time upon his own  
8 initiative propose the issuance of a regulation establishing a  
9 tolerance for a pesticide or exempting it from the necessity  
10 of a tolerance. The Administrator shall publish such pro-  
11 posal in general terms and shall give any interested person  
12 thirty days after such publication within which to file a peti-  
13 tion in accordance with paragraph (d) of this section. In  
14 the event that no such petition is filed, the proposal shall be  
15 published as a regulation and shall become effective upon  
16 publication. Such regulation shall then be subject to clause  
17 (5) of paragraph (d).

18 “(f) All data submitted to the Administrator in support  
19 of a petition proposing the issuance of a regulation con-  
20 templated by this section shall be considered confidential by  
21 the Administrator and by an advisory committee and shall  
22 not be revealed to any person other than those authorized by  
23 the Administrator and by an advisory committee in the  
24 carrying out of their official duties under this section or the  
25 court under the provisions of paragraph (i) of this section.



1       “(g) Whenever the referral of a petition or proposal  
2 to an advisory committee is requested under this section,  
3 the Administrator shall forthwith appoint a committee of  
4 disinterested experts to review the petition and to make a  
5 report and recommendations thereon. The Committee shall  
6 be composed of experts, particularly qualified in the specific  
7 subject matter of the petition, selected by the Administrator,  
8 by the person filing the petition, and by the Chairman of  
9 the Food Protection Committee of the National Research  
10 Council, the same number of experts to be selected by each.  
11 The members shall not be subject to any other provisions  
12 of law regarding the appointment and compensation of em-  
13 ployees of the United States. Members of a committee  
14 shall receive as compensation for their services a reasonable  
15 per diem, which the Administrator shall by rules and regula-  
16 tions prescribe, for time actually spent in the work of the  
17 committee, and shall in addition be reimbursed for their  
18 necessary traveling and subsistence expenses while so serv-  
19 ing away from their places of residence. The Administrator  
20 shall furnish the committee with adequate clerical and other  
21 assistance, and shall by rules and regulations prescribe the  
22 procedure to be followed by the committee.

23       “(h) The petitioner, if the proposed regulations were  
24 issued pursuant to a petition shall have the right to consult

1 with such committee, as provided in subsection (g) of section  
2 5, in connection with the petition or proposal.

3 “(i) Any person filing a petition under this section or fil-  
4 ing objections under clause (5) of paragraph (d) of this  
5 section who will be adversely affected by any order under  
6 paragraphs (d), (e), or (f) of this section may appeal  
7 from such order by filing in the United States District Court  
8 for the District of Columbia, within sixty days after the entry  
9 of the order, a petition praying that the order be modified,  
10 amended, or set aside in whole or in part. A copy of the  
11 petition shall be forthwith served upon the Administrator,  
12 or upon any officer designated by him for that purpose, and  
13 thereupon the Administrator shall certify and file in the court  
14 a transcript of the entire record including a copy of the Ad-  
15 ministrator’s findings, conclusions and order, both proposed  
16 and final, including any objections, and replies filed thereto,  
17 any report or recommendations which may have been made  
18 by the Pesticides Advisory Committee together with copies  
19 of the original petition and supporting data upon which the  
20 case was heard and submitted to the Administrator. Such  
21 petition and transcript certified by the Administrator shall  
22 upon filing in the district court constitute the pleadings and  
23 the evidence upon which the trial shall proceed subject to the  
24 right of the court to allow the taking of such oral testimony  
25 which may be necessary and relevant to the pleadings and

1 the evidence. Upon such filing, the court shall have exclu-  
2 sive jurisdiction to affirm or set aside the order complained of  
3 or to make findings of fact on the evidence with an order to  
4 the Administrator to modify or amend his order in conformity  
5 thereto, provided that the court shall consider and weigh the  
6 evidence before it de novo and no presumptive force or effect  
7 shall be given to the validity of the order complained of.

8       “If application is made to the court for leave to adduce  
9 additional evidence, the court may order such additional  
10 evidence to be taken before the Administrator and to be  
11 adduced upon the hearing in such manner and upon such  
12 terms and conditions as to the court may seem proper, if  
13 such evidence is material and there were reasonable grounds  
14 for failure to adduce such evidence in the proceeding before  
15 the Administrator. The Administrator may modify his find-  
16 ings as to the facts by reason of the additional evidence so  
17 taken, and he shall file with the court such modified findings.  
18 The judgment and decree of the court affirming, modifying,  
19 or setting aside any such order of the Administrator shall be  
20 final, subject to review as provided in sections 1254 and  
21 1291–1294 of title 28. The commencement of proceedings  
22 under this section shall not, unless specifically ordered by  
23 the court to the contrary, operate as a stay of the Adminis-  
24 trator’s order.

25       “(j) The Administrator may, upon the request of any



1 person who has obtained an experimental permit for a pesti-  
2 cide under the Federal Insecticide, Fungicide, and Rodenti-  
3 cide Act (7 U. S. C. 135) or upon his own initiative,  
4 establish a temporary tolerance for the pesticide for the  
5 uses covered by the permit whenever in his judgment such  
6 action is deemed necessary to protect the public health  
7 or may exempt such pesticide from a tolerance. In estab-  
8 lishing such a tolerance, the Administrator shall give due  
9 regard to the necessity for experimental work in developing  
10 an adequate and wholesome food supply and to the limited  
11 hazard to the public health involved in such work when  
12 conducted in accordance with applicable regulations under  
13 the Federal Insecticide, Fungicide, and Rodenticide Act.

14 “(k) (1) Regulations or proposed regulations affect-  
15 ing pesticides which are promulgated by the Administra-  
16 tor after the effective date of this section or within ninety  
17 days prior thereto under the authority of section 406 (a)  
18 and the procedure specified by section 701 (e) shall be  
19 deemed to be regulations under clause (5) of paragraph  
20 (d) of this section and shall be subject to all provisions of  
21 this section applicable thereto.

22 “(2) Regulations affecting pesticides which have be-  
23 come final before the effective date of this section under  
24 the authority of section 406 (a) and the procedure specified  
25 by section 701 (e) shall remain in full force and effect but

1 shall be amended or repealed in the manner prescribed in  
2 this section and shall be otherwise subject thereto.

3 “(l) The Secretary of Agriculture shall, upon the re-  
4 quest of any person submitting an application for the regis-  
5 tration of a pesticide under the Federal Insecticide, Fungi-  
6 cide, and Rodenticide Act or upon the request of the Admin-  
7 istrator, certify to the Administrator whether or not the  
8 pesticide is useful for the purpose for which a tolerance or  
9 exemption is requested under this section. Such certification  
10 shall be made as soon as practicable after a request is made,  
11 but in no event later than thirty days thereafter.

12 “(m) The Administrator after due notice and oppor-  
13 tunity for a public hearing is authorized to promulgate rules  
14 and regulations for the efficient administration and enforce-  
15 ment of this section. Such rules and regulations shall pre-  
16 scribe the manner in which regulations under this section  
17 may be amended or repealed.”

18 SEC. 5. There is hereby authorized to be appropriated,  
19 out of any moneys in the Treasury not otherwise appropri-  
20 ated, such sums as may be necessary for the purpose and  
21 administration of this Act.

22 SEC. 6. All provisions of this Act shall take effect upon  
23 enactment.

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# A BILL

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To provide for the health and protection of the citizens of the United States from harmful chemical additives in pesticides.

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By Mr. MULLER of Nebraska

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MARCH 26, 1953

Referred to the Committee on Interstate and Foreign  
Commerce







# S. 1542

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 1953

Mr. AIKEN introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

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## A BILL

To provide for the health and protection of the citizens of the United States from harmful chemical additives in pesticides.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Pesticides-Residue  
4       Amendment to the Federal Food, Drug, and Cosmetic Act".

5       SEC. 2. Section 201 of the Federal Food, Drug, and  
6       Cosmetic Act is amended by adding at the end thereof the  
7       following new paragraph:

8       “(q) The term ‘pesticide’ means any substance or mix-  
9       ture of substances used in the production, storage, or trans-  
10      portation of food which is intended for preventing, destroy-  
11      ing, repelling, or mitigating any insects, rodents, fungi, or

1 weeds, and other forms of plant or animal life or viruses,  
2 except viruses on or in living man or other animals.”

3 SEC. 3. Section 402 (a) (2) of the Federal Food,  
4 Drug, and Cosmetic Act is amended to read as follows:

5 “(2) if it bears or contains any added poisonous  
6 or added deleterious substance which is unsafe within  
7 the meaning of section 406, except a pesticide, or if  
8 it bears or contains any poisonous or deleterious pesticide  
9 which is unsafe within the meaning of section 407;”.

10 SEC. 4. The Federal Food, Drug, and Cosmetic Act is  
11 amended by adding at the end of section 406 (b) the  
12 following new section:

13 “SEC. 407. (a) Any poisonous or deleterious pesticide  
14 added to a food shall be deemed unsafe for the purposes of  
15 the application of clause (2) of section 402 (a) unless  
16 (1) the quantity thereof does not exceed the limits of a  
17 tolerance prescribed by the Administrator under paragraph  
18 (b) of this section; or (2) the pesticide has been exempted  
19 from the requirement of a tolerance by the Administrator  
20 under paragraph (c) of this section. While a tolerance is  
21 in effect, a food shall be deemed to be adulterated if the  
22 quantity of the pesticide which it bears or contains exceeds  
23 such tolerance. While a tolerance, or an exemption from  
24 a tolerance, is in effect, clause (1) of section 402 (a) shall  
25 not apply.

1       “(b) The Administrator shall promulgate regulations  
2 establishing a tolerance for any poisonous or deleterious  
3 pesticide to the extent necessary to protect the public health.  
4 In establishing such a regulation, the Administrator shall  
5 give appropriate consideration to the necessity for the pro-  
6 duction of an adequate and wholesome food supply. Such  
7 regulations shall be promulgated in the manner prescribed  
8 in paragraphs (d) or (e) of this section.

9       “(c) The Administrator shall promulgate regulations  
10 exempting any pesticide from the necessity of a tolerance  
11 under paragraph (b) of this section when such a tolerance  
12 is not necessary to protect the public health. Such regula-  
13 tions shall be promulgated in the manner prescribed in para-  
14 graphs (d) or (e) of this section.

15       “(d) (1) Any person submitting an application for  
16 the registration of a pesticide under the Federal Insecticide,  
17 Fungicide, and Rodenticide Act of 1947 (7 U. S. C. 135)  
18 may file with the Administrator a petition proposing the  
19 issuance of a regulation establishing a tolerance for the pesti-  
20 cide or exempting the pesticide from a tolerance. The peti-  
21 tion shall contain data showing (i) the name, chemical  
22 identity and composition of the pesticide, (ii) the amount,  
23 frequency and time of application of the pesticide, (iii)  
24 toxicity information, (iv) tests showing the amount of  
25 residue remaining, (v) proposed tolerances for the pesticide,

1 if tolerances are proposed, and (vi) reasonable grounds in  
2 support of the petition.

3 “(2) Within ninety days after filing, the Administrator  
4 shall, after giving due consideration to the data submitted or  
5 otherwise before him and after certification by the Secretary  
6 of Agriculture that the pesticide named in the petition is  
7 useful for the purpose for which the tolerance or exemption  
8 is sought, make public a regulation (a) establishing a toler-  
9 ance for the pesticide named in the petition or (b) exempting  
10 the pesticide from the necessity of a tolerance, unless within  
11 such ninety-day period the person filing the petition requests  
12 that the petition be referred to an advisory committee or if  
13 the Administrator within such period otherwise deems such  
14 referral necessary, in either of which event the provisions  
15 of clause (3) of paragraph (d) of this section shall apply  
16 in lieu hereof.

17 “(3) In the event that the person filing the petition  
18 requests within ninety days after filing that the petition be  
19 referred to an advisory committee, or the Administrator  
20 within such period otherwise deems such referral necessary,  
21 the Administrator shall forthwith submit the petition and  
22 other data before him to an advisory committee to be ap-  
23 pointed in accordance with paragraph (g) of this section  
24 provided that the Secretary of Agriculture has certified that  
25 the pesticide named in the petition is useful for the purpose



1 for which a tolerance or exemption is sought. As soon as  
2 practicable thereafter, but in no event later than sixty days  
3 after such referral, the Committee shall, after independent  
4 study of the data submitted to it by the Administrator and  
5 other data before it, certify a report and recommendations on  
6 the proposal in the petition to the Administrator. Within  
7 thirty days thereafter, the Administrator shall, after giving  
8 due consideration to the data before him including the report  
9 and recommendations of the advisory committee, make public  
10 a regulation (a) establishing a tolerance for the pesticide  
11 named in the petition or (b) exempting the pesticide from  
12 the necessity of a tolerance.

13 “(4) The regulations proposed under clause (2) or  
14 (3) of paragraph (d) of this section will be effective upon  
15 publication.

16 “(5) Within ninety days after publication, any inter-  
17 ested person may file objections specifying with particularity  
18 the changes desired in the regulation and stating reasonable  
19 ground therefor. Copy of the objections shall be served on  
20 the petitioner, if the proposed regulations were issued pur-  
21 suant to a petition. The petitioner shall have two weeks  
22 to reply to the objections. As soon as practicable there-  
23 after, the Administrator shall make public his action in  
24 affirming, modifying or revising the regulation objected to.  
25 Such action shall be effective upon publication. The

1 Administrator shall base his order under this clause or un-  
2 der clause (2) or (3) of paragraph (d) of this section on  
3 substantial evidence of record including any report or rec-  
4 ommendation of an advisory committee and shall set forth  
5 as part of the order detailed findings of fact upon which the  
6 order is based.

7 “(e) The Administrator may at any time upon his own  
8 initiative propose the issuance of a regulation establishing a  
9 tolerance for a pesticide or exempting it from the necessity  
10 of a tolerance. The Administrator shall publish such pro-  
11 posal in general terms and shall give any interested person  
12 thirty days after such publication within which to file a peti-  
13 tion in accordance with paragraph (d) of this section. In  
14 the event that no such petition is filed, the proposal shall be  
15 published as a regulation and shall become effective upon  
16 publication. Such regulation shall then be subject to clause  
17 (5) of paragraph (d).

18 “(f) All data submitted to the Administrator in support  
19 of a petition proposing the issuance of a regulation con-  
20 templated by this section shall be considered confidential by  
21 the Administrator and by an advisory committee and shall  
22 not be revealed to any person other than those authorized by  
23 the Administrator and by an advisory committee in the  
24 carrying out of their official duties under this section or the  
25 court under the provisions of paragraph (i) of this section.

1       “(g) Whenever the referral of a petition or proposal  
2 to an advisory committee is requested under this section,  
3 the Administrator shall forthwith appoint a committee of  
4 disinterested experts to review the petition and to make a  
5 report and recommendations thereon. The Committee shall  
6 be composed of experts, particularly qualified in the specific  
7 subject matter of the petition, selected by the Administrator,  
8 by the person filing the petition, and by the Chairman of  
9 the Food Protection Committee of the National Research  
10 Council, the same number of experts to be selected by each.  
11 The members shall not be subject to any other provisions  
12 of law regarding the appointment and compensation of em-  
13 ployees of the United States. Members of a committee  
14 shall receive as compensation for their services a reasonable  
15 per diem, which the Administrator shall by rules and regula-  
16 tions prescribe, for time actually spent in the work of the  
17 committee, and shall in addition be reimbursed for their  
18 necessary traveling and subsistence expenses while so serv-  
19 ing away from their places of residence. The Administrator  
20 shall furnish the committee with adequate clerical and other  
21 assistance, and shall by rules and regulations prescribe the  
22 procedure to be followed by the committee.

23       “(h) The petitioner, if the proposed regulations were  
24 issued pursuant to a petition shall have the right to consult



1 with such committee, as provided in subsection (g) of section  
2 5, in connection with the petition or proposal.

3 “(i) Any person filing a petition under this section or fil-  
4 ing objections under clause (5) of paragraph (d) of this  
5 section who will be adversely affected by any order under  
6 paragraphs (d), (e), or (f) of this section may appeal  
7 from such order by filing in the United States District Court  
8 for the District of Columbia, within sixty days after the entry  
9 of the order, a petition praying that the order be modified,  
10 amended, or set aside in whole or in part. A copy of the  
11 petition shall be forthwith served upon the Administrator,  
12 or upon any officer designated by him for that purpose, and  
13 thereupon the Administrator shall certify and file in the court  
14 a transcript of the entire record including a copy of the Ad-  
15 ministrator’s findings, conclusions and order, both proposed  
16 and final, including any objections, and replies filed thereto,  
17 any report or recommendations which may have been made  
18 by the Pesticides Advisory Committee together with copies  
19 of the original petition and supporting data upon which the  
20 case was heard and submitted to the Administrator. Such  
21 petition and transcript certified by the Administrator shall  
22 upon filing in the district court constitute the pleadings and  
23 the evidence upon which the trial shall proceed subject to the  
24 right of the court to allow the taking of such oral testimony  
25 which may be necessary and relevant to the pleadings and



1 the evidence. Upon such filing, the court shall have exclu-  
2 sive jurisdiction to affirm or set aside the order complained of  
3 or to make findings of fact on the evidence with an order to  
4 the Administrator to modify or amend his order in conformity  
5 thereto, provided that the court shall consider and weigh the  
6 evidence before it de novo and no presumptive force or effect  
7 shall be given to the validity of the order complained of.

8 "If application is made to the court for leave to adduce  
9 additional evidence, the court may order such additional  
10 evidence to be taken before the Administrator and to be  
11 adduced upon the hearing in such manner and upon such  
12 terms and conditions as to the court may seem proper, if  
13 such evidence is material and there were reasonable grounds  
14 for failure to adduce such evidence in the proceeding before  
15 the Administrator. The Administrator may modify his find-  
16 ings as to the facts by reason of the additional evidence so  
17 taken, and he shall file with the court such modified findings.  
18 The judgment and decree of the court affirming, modifying,  
19 or setting aside any such order of the Administrator shall be  
20 final, subject to review as provided in sections 1254 and  
21 1291-1294 of title 28. The commencement of proceedings  
22 under this section shall not, unless specifically ordered by  
23 the court to the contrary, operate as a stay of the Adminis-  
24 trator's order.

25 "(j) The Administrator may, upon the request of any

1 person who has obtained an experimental permit for a pesti-  
2 cide under the Federal Insecticide, Fungicide, and Rodenti-  
3 cide Act (7 U. S. C. 135) or upon his own initiative,  
4 establish a temporary tolerance for the pesticide for the  
5 uses covered by the permit whenever in his judgment such  
6 action is deemed necessary to protect the public health  
7 or may exempt such pesticide from a tolerance. In estab-  
8 lishing such a tolerance, the Administrator shall give due  
9 regard to the necessity for experimental work in developing  
10 an adequate and wholesome food supply and to the limited  
11 hazard to the public health involved in such work when  
12 conducted in accordance with applicable regulations under  
13 the Federal Insecticide, Fungicide, and Rodenticide Act.

14 “(k) (1) Regulations or proposed regulations affect-  
15 ing pesticides which are promulgated by the Administra-  
16 tor after the effective date of this section or within ninety  
17 days prior thereto under the authority of section 406 (a)  
18 and the procedure specified by section 701 (e) shall be  
19 deemed to be regulations under clause (5) of paragraph  
20 (d) of this section and shall be subject to all provisions of  
21 this section applicable thereto.

22 “(2) Regulations affecting pesticides which have be-  
23 come final before the effective date of this section under  
24 the authority of section 406 (a) and the procedure specified  
25 by section 701 (e) shall remain in full force and effect but

1 shall be amended or repealed in the manner prescribed in  
2 this section and shall be otherwise subject thereto.

3 “(l) The Secretary of Agriculture shall, upon the re-  
4 quest of any person submitting an application for the regis-  
5 tration of a pesticide under the Federal Insecticide, Fungi-  
6 cide, and Rodenticide Act or upon the request of the Admin-  
7 istrator, certify to the Administrator whether or not the  
8 pesticide is useful for the purpose for which a tolerance or  
9 exemption is requested under this section. Such certification  
10 shall be made as soon as practicable after a request is made,  
11 but in no event later than thirty days thereafter.

12 “(m) The Administrator after due notice and oppor-  
13 tunity for a public hearing is authorized to promulgate rules  
14 and regulations for the efficient administration and enforce-  
15 ment of this section. Such rules and regulations shall pre-  
16 scribe the manner in which regulations under this section  
17 may be amended or repealed.”

18 SEC. 5. There is hereby authorized to be appropriated,  
19 out of any moneys in the Treasury not otherwise appropri-  
20 ated, such sums as may be necessary for the purpose of  
21 administration of this Act.

22 SEC. 6. All provisions of this Act shall take effect upon  
23 enactment.

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# A BILL

To provide for the health and protection of the citizens of the United States from harmful chemical additives in pesticides.

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By Mr. AIKEN

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APRIL 1, 1953

Read twice and referred to the Committee on Labor and Public Welfare







the Red flank will be complete around southeast Asia and extend almost to Australia.

What holds the young Republic together is baffling—perhaps no more than the vagaries of Moscow's timetable. The well-organized Communist Party of Indonesia now has balance of power in the Government. This is the strongest position the Reds have enjoyed since 1948, when they almost took over the Republic. They completely control the federation of trades unions and, as in Indochina, play heavily on hot-blooded nationalism.

Two other parties are bigger, the Masjumi (Moslem) and the Nationalists. But they lack the Reds disciplined drive. They battle between themselves, principally on whether Indonesia should have a general election. The Republic never has held an election. President Sukarno who, apparently, is in office for life, rules more or less by decree. The Nationalists, who make up the cabinet, want no election because the Moslems with 90 percent of the population, might sweep the country.

Corruption, graft, and doubledealing are as lush as the jungle itself. Frequent armed rebellions are too much for the 200,000-man army, throwing the country into semianarchy. Despite rich natural resources, the 8 years of war, occupation and revolution have seriously crippled the economy.

Indonesia, in an official effort to stay neutral between communism and the West, resolutely turned thumbs down on American military aid. But we have managed to pour around \$4 million annually into the country—with not much to show for it.

#### FORMOSA

President Eisenhower in his inaugural message last January said he was ordering that the United States 7th fleet "no longer be employed to shield Communist China."

This put new life and high hope in Nationalist China. It focused world attention on the 500,000-man anti-Communist army on Formosa, preparing for the day when it could strike back for its mainland home.

American correspondents who rushed to Taipei were told by top Chinese leaders: "When we land on the mainland, we mean to stay." And—"with 150 sabre jets he could do the job \* \* \* there are 650,000 organized guerrillas in China to help us." And, "decisions made in Washington, not here, will determine what we do."

Since then nothing has happened—beyond a few guerrilla raids and naval harassments and a stepped-up program of American aid, including those much-wanted jets. The visiting correspondents have gone, a minor cabinet crisis has occurred, and, except for occasional visits by American military leaders, Formosa has been left alone.

Yet morale has continued high, thanks partly to able Karl Rankin, United States Ambassador. Chiang Kai-shek's troops are getting a little older but there are at least 15 well-trained light divisions.

But what of those decisions in Washington? Apparently none has been made. American observers on Formosa put it this way: "If we want Chiang to do nothing but defend Formosa, we are sending him too much aid; but if we want him to open a real offensive on the mainland, we are doing far too little."

#### PHILIPPINES

Most hopeful of all the troubled spots in the Far East is the Philippines.

Ramon Magsaysay on November 10 was overwhelmingly elected president and his opponent, President Elpidio Quirino, didn't try to stay on. It had been freely predicted Quirino would never give up the presidency regardless of the vote.

The Filipinos are launched upon a promising new era. President Magsaysay campaigned on the issue of corruption. As an

administrator he is yet untested, and his cabinet comparatively unknown. But his record of integrity is unchallenged. Filipinos are convinced he will not disappoint them.

But the principal cause for rejoicing is that the people showed the world, and in particular their Far East neighbors, that the young republic was capable of carrying out a democratic election under stress.

President Magsaysay will be as strong a friend of America as he is an enemy of communism. He faces a host of internal fiscal and economic problems.

OLAND D. RUSSELL.

## President Eisenhower's "D-day"

### EXTENSION OF REMARKS

OF

## HON. JOHN W. McCORMACK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, January 11, 1954

Mr. McCORMACK. Mr. Speaker, in my remarks, I include an article entitled "President Eisenhower's 'D-day'," written by Ernest K. Lindley, which appeared in the December 7, 1953, issue of Newsweek.

I think it is reasonable to infer from the written article that Mr. Lindley did not think at the time he wrote this particular article that President Eisenhower has been a fighting President to date. Also, that the first year of his administration has been one of Government by postponement.

It will be interesting to see if President Eisenhower becomes a fighting President with his own party Members in Congress. If so, it will be most interesting to see the percentage of support the President will receive from the Republicans in Congress.

Mr. Lindley is a careful writer. I assume he had received information from some persons close to President Eisenhower that—

The Eisenhower administration, it may be stated categorically, is now prepared to take the offensive.

I note Mr. Lindley's attempted comparison of the first year of President Eisenhower's administration with "many of the characteristics of the Army of the Potomac before Grant" and that the passage of "the foreign-aid program, extension of excess-profits tax, and some other essential items in its armory" were a partial victory that "may be regarded as President Eisenhower's Gettysburg."

If this comparison has any application to the first year of the present administration, then it was the Democrats in Congress—the minority or opposition party—not the Republicans—that saved the day for President Eisenhower, in the period which Mr. Lindley stated, "up to now has displayed many of the characteristics of the Army of the Potomac before Grant."

### PRESIDENT EISENHOWER'S "D-DAY"

(By Ernest K. Lindley)

The Eisenhower administration up to now has displayed many of the characteristics of the Army of the Potomac before Grant. In its first days it was occasionally caught by surprise and routed by weaker but more de-

termined and more skillfully led forces. When it had overwhelming superiority, it failed to take the offensive, pleading to take need for more time to get ready and overestimating its opposition. When rebuffed, it usually retreated. When it won an initial advantage, it failed to follow through. It seemed to lack a consistent strategy.

To identify the President's lieutenants with Civil War counterparts would perhaps stretch the comparison too far, although Ezra Taft Benson's imperturbable resolution under fire suggests Winfield Scott Hancock.

Near the end of the first session of Congress, the administration took a stand deep in its own territory and saved the foreign-aid program, extension of the excess-profits tax, and some other essential items in its armory. That partial victory may come to be regarded as its Gettysburg. This assumes of course that Mr. Eisenhower's Army of the Potomac, like Grant's, passes to and perserveres in the offensive.

The Eisenhower administration, it may be stated categorically, is now prepared to take the offensive. It has developed a comprehensive legislative program. Part of this program already has been approved by the Cabinet and other parts are nearing that stage. This program contains some things that will disappoint, and perhaps decidedly displease, various elements in the Republican Party.

It may be stated further that men who want the President to fight for this program now appear to be in the ascendant. There are indications that the President's jaw is set.

At intervals during the last 10 months, predictions have come from the inner circles of the administration that the President was going to become firm or even tough. On some occasions, as in the fight over the confirmation of Ambassador Bohlen, these predictions were borne out. Just as often, they were not.

For at least four reasons, similar forecasts now rest on a broader foundation. First, there is a limit to the pushing around which a man even so forbearing as Mr. Eisenhower will endure. Secondly, he has had an opportunity to learn from experience that appeasement of his enemies in the party is unrewarding. Thirdly, the time for action on several problems is running out, and it is evident that unless Mr. Eisenhower seizes and holds leadership he is not likely to go down in the books as a successful President. Fourthly, his administration has had time to develop a comprehensive program.

The numerous commissions, committees, and other study groups set up by the Eisenhower administration last spring were not intended to become a battery of "file and forget" files. Postponement was in large part a deliberate strategy. Whether it was a wise strategy is still an open question. But, in the administration at least, the decisions then deferred are now being made. If the President now presents and energetically presses a comprehensive Eisenhower program, the charge of "government by postponement" will automatically fall.

Mr. Eisenhower's advisers realize that several parts of his legislative program will divide the Republican Party. They are ready to put aside the doctrine, which so often prevailed last spring, that no measure shall be pressed which is not approved by all, or nearly all, the Republicans in the House and Senate.

Mr. Eisenhower has gone about the development of his program much as a commander prepares for a major invasion. Meanwhile, in preliminary engagements he has tested various tactics and the caliber of his lieutenants. Now, D-day is near at hand. It will arrive with his state of the Union message to Congress. Whether the Eisenhower offensive will be executed with force, skill, and pertinacity we must wait to see. But undeniably it is being mounted.



## Protecting the Public Health

EXTENSION OF REMARKS  
OF

HON. A. L. MILLER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 11, 1954

Mr. MILLER of Nebraska. Mr. Speaker, since the end of World War II, the use of new chemicals in the production of pesticides has increased at such a rate that the Federal Food, Drug, and Cosmetic Act of 1938 has, for all intent and purposes relative to pesticides, become obsolete. During the last session of this Congress, I introduced legislation, H. R. 4277, to amend the Food, Drug, and Cosmetic Act so that officials of the Food and Drug Administration could more easily cope with the present situation.

Many have become quite fearful of any or all pesticide chemicals—some of these fears are based on fact, but the vast majority have arisen from vicious propaganda designed to provoke hysteria. The very nature of the existing laws tends to foster rather than eliminate these fears. Under present conditions, the manufacturer of a new pesticide chemical need only to apply to the Secretary of Agriculture and get his approval under the Federal Insecticide, Rodenticide, and Fungicide Act of 1947 in order to place his product on the market. A tolerance need not be established and, therefore, it was possible that a dangerous product could be placed on the market.

I believe it is proper to point out at this time that industry has been quite careful to insure that the products they place on the market are not dangerous to public health. Recently, one manufacturer withdrew his product voluntarily from the market just as soon as he found out it might be dangerous to public health. This was done before his product was investigated by Food and Drug. Had this individual been without scruples and cared only for economic gains, he could have let his product remain on the market until such time as Federal authorities confiscated it as poisonous or deleterious.

Under the provisions of the bill which I have introduced today, no product could be placed on the market unless a tolerance is first established.

When I introduced the first pesticide residue bill, I said that it was the culmination of many hours of conferences with interested groups and was the common ground of thinking for all concerned. There were some differences of thinking in respect to some of the provisions and language. Hearings were held by a subcommittee of the Interstate and Foreign Commerce Committee headed by the gentleman from Illinois [Mr. SPRINGER], and it was determined that further study should be made with the hopes that the differences could be ironed out. It was agreed that the counsel for the committee along with representatives of the Food and Drug Administration, the Department of Ag-

riculture, the farming industry, the manufacturing industry, and myself should meet and recommend any changes which might be necessary.

The meetings have been held. Officials of Food and Drug, Agriculture, land-grant colleges, farm organizations, chemical industry, and myself have held several conferences and have agreed on all major issues in question with the result being the clean bill which I introduced today.

## PRESENT LAW

Under the provisions of the 1938 act, a food is considered adulterated if it bears or contains any poisonous or deleterious substance which is unnecessary or which exceeds an amount specified by regulations of the Secretary of Health, Education, and Welfare. Pesticide chemicals used in agriculture are generally considered to be poisonous or deleterious substances, and, as such, are subject to the provisions of the act limiting the amount which may remain in or on food. The amount which may remain in or on food, which is determined by secretarial regulations, is generally referred to as a tolerance.

The present procedure for establishing tolerances involves the holding of public hearings at which time evidence must be presented to show: First, the use of the pesticide chemical is necessary in the production of food; second, the amount of residues remaining in or on the food; and, third, toxicity data upon which tolerances adequate to protect the public health may be established.

This procedure has been in effect for over 15 years. I might point out that at the time this procedure was established, it was not anticipated that such tremendous gains would be made by industry. Many thought then as others did during the early 1800's in regard to the United States Patent Office when legislation was introduced to close that office because some felt that everything that was to be invented had been invented already. It would be folly, or the words of a person destitute of imagination, if he were to say nothing more could be invented and the Patent Office should be closed.

Mr. Speaker, it would border on the same today if someone were to say every new chemical pesticide had been discovered. Government and industry are just beginning to clear the way for new and better pesticides to curb, and perhaps some day completely eliminate, the staggering losses incurred by agriculture due to fungus and pests. These losses have cost not only agriculture, but the consumer as well, billions of dollars.

Industry has been faced with an almost insurmountable handicap in this field. This handicap has been the cumbersome and impracticable procedure to establish tolerances under existing laws. Since 1938, a tolerance has been established for only one pesticide chemical. In 1950 lengthy public hearings at a cost of nearly a half a million dollars to Government, to industry, to agricultural organizations, and to the various land-grant colleges were held. These hear-

ings, despite the extensive hours of testimony, failed to produce the establishing of a single tolerance of any degree.

The bill which I introduced is designed to remedy this defect by providing a simple, more appropriate procedure to establish tolerances for pesticide chemicals and to prevent the use of the new pesticide chemical until such a tolerance as needed has been established.

## SUMMARY OF PROCEDURE

Under my bill, the process for establishing a tolerance on a pesticide chemical used on raw agricultural commodities would be initiated by the manufacturer of the chemical, or by one similarly situated, or by the Secretary of Health, Education, and Welfare initiative. Such person would file a petition with the Secretary requesting a tolerance with scientific data and reasons in support thereof, and would request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare that the pesticide chemical was useful for its intended purpose, and that the requested tolerance was in line with the amount of residue likely to result when the pesticide chemical was used as proposed.

Within 90 days after this were done, the Secretary of Health, Education, and Welfare would make public a regulation establishing a tolerance. If within this period the person petitioning for the tolerance requested, or the Secretary of Health, Education, and Welfare deemed it desirable, the matter would be submitted to an advisory committee of scientific experts familiar with the problems involved. Members of the advisory committee would be appointed by the Secretary of Health, Education, and Welfare from a list submitted by the National Academy of Sciences. The advisory committee, after studying the data before it, would make a report and recommendations of an advisory nature to the Secretary, who would consider the report in establishing a tolerance.

The bill also provides that anyone adversely affected by a tolerance issued under the foregoing procedure could request a public hearing on the tolerance or portions thereof deemed objectionable upon a showing of reasonable grounds. A public hearing would then be held on the controversial issue of the proposed tolerance. The Secretary of Health, Education, and Welfare would then publish an order affirming or modifying the original tolerance upon the basis of evidence produced at the hearing. This order would be subject to court review in the manner generally prescribed in other regulatory statutes.

## CONCLUSION

All in all, I believe the procedure specified in this bill would enable the prompt and efficient establishment of appropriate tolerances for pesticide chemicals used in or on raw agricultural commodities. This would definitely be to the advantage of all concerned with the use of pesticide chemicals. The food consumer for the first time would be assured that a tolerance assuring safety has been established for every pesticide chemical used in the production and storage of the raw agricultural com-



modity. At the same time, chemical manufacturers would have standards upon which to base recommendations to the grower in the use of these chemicals, and the grower would not have his products confiscated because he did not know the tolerance for the various chemicals.

The grower would be assured that he would be in compliance with the law if he followed the recommendations of these agencies and of the manufacturer. The Department of Health, Education, and Welfare would have a definite standard to carry on their enforcement responsibilities as regards to a safe food supply under the Federal Food, Drug, and Cosmetic Act.

In view of the urgency of this legislation and the expressed need for it, as well as the complete agreement, I sincerely hope early action will be given this bill.

**William T. Collins, Surrogate of New York County**

# EXTENSION OF REMARKS OF

**HON. ARTHUR G. KLEIN**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 6, 1954

Mr. KLEIN. Mr. Speaker, on November 18, 1953, about 300 members of the New York bar assembled at the Manhattan Club in New York City to celebrate the 25th anniversary of the judicial services of Surrogate Collins. Born 67 years ago in lower New York, in the district which I have the honor of representing Surrogate William T. Collins typifies the rise of a boy from the sidewalks of New York to a position of prominence in his beloved city. Since his first entry into public service in 1907, the public has been well aware of Judge Collins' judicial ability and understanding. For many years he has played an active part in civic and charitable activities. He has been honored by his church by being made a Knight of Malta. In 1943 he was cited for his outstanding contributions to the interfaith movement. The Federation of Jewish Philanthropies in 1951 paid tribute to him for his efforts in behalf of this worthwhile endeavor. These are but two of the many honors he has acquired through the years. The list is endless.

I feel his remarks were so cogent, so sincere, and felicitous in expression, I am moved to insert them herewith:

Listening to the effusive praise, which will bewilder and dazzle and overwhelm me the rest of my days, I was keenly tempted to interrupt the well-meaning perpetrators by reminding them of the pertinent admonition in Homer's *Iliad*—

"Praise me not too much,  
Nor blame me, for thou speakest to the  
Greeks  
Who know me."

Moreover, the thickly spread praise brought to mind the embarrassing dictum of Jonathan Swift that:

"Tis an old maxim in the schools,  
That flattery's the food of fools."

In addition, I felt I should shut off the flow of flattery by nudging the speakers with Mark Twain's observation about truth. "Truth," he once said, "is the most valuable thing we possess. Therefore we should be economical with it."

Well, even if my charitable friends have been iavish with the truth tonight, let me assure them that it has not been wasted or lost on me. For, if flattery's the food of fools, it's my dish, and I lap it up ravenously.

In this gluttonous position I'm somewhat comforted by the decision of the poet who wrote:

"The love of praise, howe'er concealed by art,  
Reigns more or less and glows, in every  
heart."

No; I can't truthfully tell you that my ears were closed or that I wanted to escape by the nearest exit while the speakers were doing their pleasing stuff.

"Delightful praise!—like summer rose,  
That brighter in the dewdrop glows."

Tonight this is all the more profoundly appreciated because it emanates from our president and my dear friend, Tom Corcoran, from my boyhood chum and schoolmate Tommy Sheridan. Likewise I am grateful for the eulogistic and soothing words of my friend and superior, Dave Peck.

Every now and then Dave and his confederates take me behind the Twenty-fifth Street marble shed and administer a not-always-gentle judicial spanking for what they, in their superior wisdom, deem my misconception of the law. Tonight, however, I have him across my knees. Even so, I happily reject the advantage. Indeed, after hearing Dave's eloquent, superlatively satisfying, and stirring tribute, I feel more like taking him affectionately to my proud and grateful bosom instead of across my knees. I am deeply and warmly thankful for his bountiful approbation, not only because of his exalted position, but also because all who know him know that he is not careless in distributing compliments. Consequently all reversals are gladly forgiven.

Of the many others present, at this delightful celebration, I can feelingly say:

"We have been friends together,  
In sunshine and in shade."

I would indeed be insensitive to all human emotions, to all natural sentiment, if my heart did not respond with abundant gratitude for this magnificent manifestation of esteem and friendship, and if my thoughts were not laden with remembrances traversing a quarter of a century—and even beyond.

When I reflect on the incandescent history of this 88-year-old Manhattan Club, and consider the great men it has honored, and who have honored the club, it becomes inexpressibly heartwarming and soul stirring that my 25 years as judge and surrogate should be marked so movingly in this citadel of friendship and distinction. I need not stress that I relish the glowing memories which these dear walls hold for me, and I am immensely proud that I've been a member of this club for more than two decades, and that I served as its president for 4 years.

I make no secret of the fact that I was infused with exultation when, in December 1928, the distinguished Democratic Governor, Al Smith, appointed me to preside in the Supreme Court, where my dear father was once an attendant. Self-evidently, the event was an epochal one in my life.

And still another epochal happening in my busy life was in 1946, when the distinguished and capable Republican Governor, Tom Dewey, appointed me, an incurable Democrat, to succeed my incomparable friend, your devoted friend and our former president, the great surrogate, the late lamented Jim Foley.

I would be guilty of false modesty were I to refrain from expressing tonight my eternal gratitude and vast pride for what I believe to be a unique distinction—of having been appointed first by an eminent Democrat and later by an eminent Republican, each of whom was the choice of his party for the Presidency. I devoutly hope that I have vindicated the confidence reposed in me by these two notable Governors, and that I have not disappointed the political parties that nominated me, or the voters who trustingly elected me.

Although my decisions have not always squared with subsequent opinions of the appellate courts, they have, nevertheless, always squared with my conscience. Yes, my conscience immodestly assures me that I have striven scrupulously to conform to the succinct and humane code of the prophet Micah, "to do justly, and to love mercy, and to walk humbly with my God."

Throughout the years that I have been privileged to bask in what Coke happily called the gladsome light of jurisprudence, my conception of rules of procedure, of technicalities, has been that they are routes, not the destination; the tools, not the product; the destination and the product is justice. I have tried to emphasize the spirit rather than the letter of the law. The substance has always seemed to me vastly more important than the form. To me, the common law means commonsense; the statutory law, as I view it, is, in the words of Samuel Johnson, "the last resort of human wisdom acting upon human experience for the benefit of the public."

Tonight my nostalgic and misty eyes naturally look back upon what Tennyson vividly called the eternal landscape of the past.

"Remembrance wakes with all her busy train,  
Swells at my breast, and turns the past to  
pain."

Eagerly glancing around these tables, I poignantly miss the many departed whose friendship I valued and whose company I loved.

I do not intend to burden you with a chronology of the noteworthy happenings during my 25-years on the bench. Yet, reference to a few of them will indicate the length and the significance of the span we have crossed in the momentous interim.

I have already noted that when I was appointed in 1928 Coolidge was President; William Howard Taft was Chief Justice of the United States; the nonpareil Cardozo was chief judge of the court of appeals, and a former president of this club; our devoted friend, Victor J. Dowling, occupied the pivotal position now so efficiently and graciously held by Dave Peck. Lyman Spalding was president of this club. The personable and jaunty Jimmy Walker was mayor, and our mayor-elect and fellow member, young Bob Wagner, was just finishing prep school and still 3 years away from voting age. Neither the New Deal nor the Fair Deal had been conceived. Prohibition was on the books, but the stuff was in the bottles. World War II was not even dimly on the horizon, and the atom age was not visible in the crystal ball. F. D. R. was not part of our language, and U. N. were just letters in the alphabet. The world was more recognizable and less complicated.

Thus, the quarter of a century I have worn the sacred judicial robe witnessed miraculous changes; unpredicted, undreamed of, unimaginable things came to pass. Those years were extraordinarily historic and unprecedentedly productive. Like all changes, like all human experience—in sum, like life itself—the products and consequences have been mixtures of good and evil, of tears of joy and tears of sorrow, of laughter and mourning, of exaltation and lamentation, of pain and robustness, of buoyancy and de-



spondency, of birth and death—of Democrat and Republican. And despite everything, our hopes are still vigorous and aloft, our faith remains invincible, and our undaunted eyes envision a better future.

All in all, I am fortunate and happy to be able to say that life has been good to me. And I would like to think that I have reciprocated in some small measure by making at least a small contribution toward a reasonable and decent and an equitable administration of justice.

I thank each of you most heartily for making me ineffably happy by your presence on this impressive and—for me, anyway—memorable occasion. Although it would be difficult for any human being to measure up to the magnanimous laudations of this evening, please be assured that you have inspired me to try more diligently and faithfully than ever to deserve this splendid demonstration of your high regard, your rare confidence, and your priceless friendship.

And now, having seen that "my cup runneth over," you have thoughtfully and generously come to the rescue by providing Mrs. Collins and me with a much larger and elegant and more useful receptacle. Thereby you have enhanced my gratitude and increased my debt to you beyond calculation or possible repayment.

This handsome silver bowl will ornament our table and thus decorate our home. It is a rich keepsake. And when the candles are lighted, they will brighten our spirits and warm our hearts.

Of course, if Mrs. Collins were here, she, too, would thank you fervently. In her absence, I'm thanking you for her, as her special guardian, as well as *amicus curiae*.

## REA Criticism Backfires

### EXTENSION OF REMARKS OF

**HON. MELVIN R. LAIRD**

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, January 11, 1954

Mr. LAIRD. Mr. Speaker, under leave to extend my remarks, I wish to include an editorial from the Marshfield News-Herald, Marshfield, Wis., Howard A. Quirt, editor and publisher, of Friday, December 11, 1953. The editorial reads as follows:

#### REA CRITICISM BACKFIRES

Senator KEFAUVER, who said some nasty things about Republican administration of the REA while he was in Wisconsin this fall campaigning in the Ninth District, has not stopped saying them. But he should.

The Senator was brought up sharply the other day when Ancher Nelson, the Minnesota man who now heads the Rural Electrification Administration, corrected some of the figures the Tennessean has been using. "We are hopeful you will be pleased to learn," Nelson said blandly, "that the department has made loans totaling \$39,501,600 in the first 4 months of fiscal year 1953-54, rather than \$29,095,748 mentioned in your letter."

The amount the Government is lending to rural electric coöperatives is, however, no sound basis for a comparison of Republican versus Democratic interest in farm electrification.

It would be well for Senator KEFAUVER and other critics of the present administration to remember that there is no longer the need for REA credit which existed during the earlier years of the program. Today more than 90 percent of the Nation's farms have electricity, and it would not speak well of the Democratic stewardship of the REA program

up to this time if the Nation's REA co-ops still needed as much credit as they did when they were getting under way.

## Shipstead Drafts Cheap Northwest Power Plan

### EXTENSION OF REMARKS OF

**HON. JOSEPH P. O'HARA**

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 11, 1954

Mr. O'HARA of Minnesota. Mr. Speaker, the history of the development of the Rural Electrification Administration would not be complete without citation of the all-important part played by former Senator Henrik Shipstead, of Minnesota, in the birth and development of that great program. Fortunately, the files of the St. Paul Pioneer Press record the fact of the all-important part that Senator Shipstead had in that great American enterprise.

Senator Shipstead served in the United States Senate for 24 years. He and Mrs. Shipstead now live at Alexandria, Minn., where they enjoy not only the friendships and associations of that community but of their host of friends throughout the entire State of Minnesota.

For the RECORD, I enclose an article from the St. Paul Pioneer Press of December 24, 1934, under the byline of J. R. Wiggins, who was then the staff correspondent of that publication.

The article follows:

SHIPSTEAD DRAFTS CHEAP NORTHWEST POWER PLAN—CONGRESS O. K. TO BE SOUGHT ON FARM AREA AID—UNITED STATES AND STATES WOULD JOIN TO BUILD "TVA" PROJECT ON UPPER MISSISSIPPI—FEDERAL LOANS AIMED—JOBS FOR MILLIONS AND MODERNIZED RURAL HOMES SEEN UNDER PROGRAM

(By J. R. Wiggins)

WASHINGTON, December 23.—An upper Mississippi version of the Tennessee Valley Administration, to bring to northwest rural communities low-cost electricity, inexpensive farm-home modernization, restore lake levels and ground waters, and control floods is provided in legislation being drafted by Senator Shipstead, of Minnesota, for presentation early in the next session of Congress.

Broad State and local powers will be sought from the Federal Government to permit a joint State and national program of water-resource utilization and rural electrification and modernization that will develop hydroelectric power sites, set up economical power units, turn back to forest or wilderness areas of drained land unadapted to agriculture, check rapid water runoff, and prevent flooding.

More than a year's preparation in which experts in private fields and in the administration have participated, Shipstead said, has been put into his legislation.

Supplementary legislation to utilize powers conveyed in his bill would be necessary in the States, he asserted.

#### CALLS WATER ASSET

"Treatment of water as an asset instead of an enemy," Shipstead said here as he announced his plan, "ought to be the philosophy behind a sound regional program for the Northwest to turn to the highest public advantage our tremendous natural heritage of streams and lakes."

Federal assistance would be provided to prevent the tragedies of drought and water shortage induced by unwise drainage policies of the past, the senator said.

Working together, he said, the communities and States of the upper valley should not only return to marsh and forest areas unsuited to agriculture that were unwisely drained, but also should take steps to develop a region-wide system of water conservation that would begin with dams on the smallest draws and ditches to obstruct the rapidity of water runoff.

Power aspects of his regional plan, the Senator said, were by no means limited to utilization of more than a million kilowatts of undeveloped hydro sites in the Northwest, but included as well provision for widespread construction of fuel-burning plants which the waterpower might supplement.

#### SEES JOBS FOR MILLIONS

Asserting that only 20 percent of the farms in Northwest States were shown to have electricity in surveys made by the CWA for the Department of Agriculture, the Minnesota Senator said these potential consumers offered a market for power in the manufacture of which millions of idle men might be profitably employed.

Counties and other units of government, he said, must be permitted to join in cooperative units to create a single power agency of an area and population fixed by economies of electrical generation and transmission. An ideal district, he thought, ought to be no larger than 200 miles in radius and have a population providing not less than 40,000 consuming units.

While offering no estimates of cost, the Senator said he had been told by sound engineering authority that 5,000 consuming units within a radius of 25 miles could be served by a plant built for \$60,000. Farm electricity at 5 cents a kilowatt-hour, the Senator was inclined to believe, would be possible. Such a rate he prophesied would multiply farm consumers in States like Minnesota, Iowa, and Wisconsin, where farm rates are the highest in the country.

#### PLANS GOVERNMENT LOANS

To build necessary facilities of generation and transmission Shipstead's bill would have the Government make loans on revenue bonds secured by the earning capacity of the constructed plants and amortized out of their subscriber revenues. Such self-liquidating projects, he believed, should not be secured by existing Government units whose bonded debt already is heavy but by the new power districts to be set up.

With cheap power the Shipstead plan would couple farm home modernization. By using the organizing power of Government he said it would be possible to provide farmers with complete bathroom outfits at low cost. Purchases in thousands of lots, he said he had been informed by one of the Nation's largest plumbing manufacturing companies, might be arranged for as low as \$50 for a tub, sink, and toilet. The Department of Agriculture engineering division, he continued, would be drafted to make plans for simple farm-built concrete septic tank systems.

#### PAYMENT ON ELECTRIC BILLS

Equipment needed for farm home modernization, Shipstead declared, could be purchased by the power units set up and sold to farmers on a credit plan that would allow repayment with their electric bills each month on a long-time installment plan.

This scheme, he asserted, would put running water and other modern conveniences in thousands of farm homes where they could not otherwise be provided at prices within reach of farm purchasers for a long time.

To illustrate the potential demand for such modernization equipment at the right price, Shipstead cited the farm housing survey conducted for the Department of Agriculture by CWA workers. Taking Winona



83<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 7125

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 1954

Mr. MILLER of Nebraska introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That section 201 of the Federal Food, Drug, and Cosmetic  
4       Act is amended by adding at the end thereof the following  
5       new paragraphs:  
6       “(q) The term ‘pesticide chemical’ means any sub-  
7       stance which, alone, in chemical combination or in formu-  
8       lation with one or more other substances, is an ‘economic  
9       poison’ within the meaning of the Federal Insecticide,  
10      Fungicide, and Rodenticide Act (7 U. S. C., secs.

1 135-135k) as now in force or as hereafter amended, and  
2 which is used in the production, storage, or transportation  
3 of raw agricultural commodities.

4 “(r) The term ‘raw agricultural commodity’ means  
5 any food in its raw or natural state, including all fruits that  
6 are washed, colored, or otherwise treated in their unpeeled  
7 natural form prior to marketing.”

8 SEC. 2. Clause (2) of section 402 (a) of the Federal  
9 Food, Drug, and Cosmetic Act is amended to read as follows:

10 “(2) if it bears or contains any added poisonous or  
11 added deleterious substance, except a pesticide chemical  
12 in or on a raw agricultural commodity, which is unsafe  
13 within the meaning of section 406, or if it is a raw agri-  
14 cultural commodity and it bears or contains a pesticide  
15 chemical which is unsafe within the meaning of section  
16 408 (a);”.

17 SEC. 3. Chapter IV of the Federal Food, Drug, and Cos-  
18 metic Act is amended by adding at the end thereof the fol-  
19 lowing new section:

20 “TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW  
21 AGRICULTURAL COMMODITIES

22 “SEC. 408. (a) Any poisonous or deleterious pesticide  
23 chemical, or any pesticide chemical which is not generally  
24 recognized, among experts qualified by scientific training and  
25 experience to evaluate the safety of pesticide chemicals, as



1 safe for use, added to a raw agricultural commodity, shall be  
2 deemed unsafe for the purposes of the application of clause  
3 (2) of section 402 (a) unless—

4 “(1) a tolerance for such pesticide chemical in or  
5 on the raw agricultural commodity has been prescribed  
6 by the Secretary of Health, Education, and Welfare  
7 under this section and the quantity of such pesticide  
8 chemical in or on the raw agricultural commodity is  
9 within the limits of the tolerance so prescribed; or

10 “(2) with respect to use in or on such raw agri-  
11 cultural commodity, the pesticide chemical has been  
12 exempted from the requirement of a tolerance by the  
13 Secretary under this section.

14 While a tolerance or exemption from tolerance is in effect  
15 for a pesticide chemical with respect to any raw agricultural  
16 commodity, such raw agricultural commodity shall not, by  
17 reason of bearing or containing any added amount of such  
18 pesticide chemical, be considered to be adulterated within  
19 the meaning of clause (1) of section 402 (a).

20 “(b) The Secretary shall promulgate regulations es-  
21 tablishing tolerances with respect to the use in or on raw  
22 agricultural commodities of poisonous or deleterious pesti-  
23 cide chemicals and of pesticide chemicals which are not gen-  
24 erally recognized, among experts qualified by scientific train-  
25 ing and experience to evaluate the safety of pesticide chemi-

1 cals, as safe for use, to the extent necessary to protect the  
2 public health. In establishing any such regulation, the  
3 Secretary shall give appropriate consideration, among other  
4 relevant factors, (1) to the necessity for the production  
5 of an adequate, wholesome, and economical food supply;  
6 (2) to the other ways in which the consumer may be af-  
7 fected by the same pesticide chemical or by other related  
8 substances that are poisonous or deleterious; and (3) to  
9 the opinion of the Secretary of Agriculture as submitted with  
10 a certification of usefulness under subsection (1) of this  
11 section. Such regulations shall be promulgated in the man-  
12 ner prescribed in subsection (d) or (e) of this section. In  
13 carrying out the provisions of this section relating to the  
14 establishment of tolerances, the Secretary may establish  
15 the tolerance applicable with respect to the use of any  
16 pesticide chemical in or on any raw agricultural commodity  
17 at zero level if the scientific data before the Secretary does  
18 not justify the establishment of a greater tolerance.

19 “(c) The Secretary shall promulgate regulations ex-  
20 emptioning any pesticide chemical from the necessity of a  
21 tolerance with respect to use in or on any or all raw agricul-  
22 tural commodities when such a tolerance is not necessary to  
23 protect the public health. Such regulations shall be promul-  
24 gated in the manner prescribed<sup>11</sup> in subsection (d) or (e)  
25 of this section.

1       “(d) (1) Any person who has registered, or who has  
2 submitted an application for the registration of, an economic  
3 poison under the Federal Insecticide, Fungicide, and Roden-  
4 ticide Act may file with the Secretary of Health, Education,  
5 and Welfare, a petition proposing the issuance of a regulation  
6 establishing a tolerance for a pesticide chemical which consti-  
7 tutes, or is an ingredient of, such economic poison, or  
8 exempting the pesticide chemical from a tolerance. The  
9 petition shall contain data showing—

10       “(A) the name, chemical identity, and composition  
11 of the pesticide chemical;

12       “(B) the amount, frequency, and time of application  
13 of the pesticide chemical;

14       “(C) full reports of investigations made with respect  
15 to the safety of the pesticide chemical;

16       “(D) the results of tests on the amount of residue  
17 remaining, including a description of the analytical  
18 methods used;

19       “(E) practicable methods for removing residue  
20 which exceeds any proposed tolerance;

21       “(F) proposed tolerances for the pesticide chemical  
22 if tolerances are proposed; and

23       “(G) reasonable grounds in support of the petition.

24 Samples of the pesticide chemical shall be furnished to the  
25 Secretary upon request. Notice of the filing of such petition



1 shall be published in general terms by the Secretary within  
2 thirty days after filing. Such notice shall include the  
3 analytical methods available for the determination of the  
4 residue of the pesticide chemical for which a tolerance or  
5 exemption is proposed.

6 “(2) Within ninety days after a certification of useful-  
7 ness by the Secretary of Agriculture under subsection (1)  
8 with respect to the pesticide chemical named in the petition,  
9 the Secretary shall, after giving due consideration to the data  
10 submitted in the petition or otherwise before him, by order  
11 make public a regulation—

12 “(A) establishing a tolerance for the pesticide  
13 chemical named in the petition for the purposes for  
14 which it is so certified as useful, or

15 “(B) exempting the pesticide chemical from the  
16 necessity of a tolerance for such purposes,

17 unless within such ninety-day period the person filing the  
18 petition requests that the petition be referred to an advisory  
19 committee or the Secretary within such period otherwise  
20 deems such referral necessary, in either of which event the  
21 provisions of paragraph (3) of this subsection shall apply in  
22 lieu hereof.

23 “(3) In the event that the person filing the petition  
24 requests, within ninety days after a certification of useful-  
25 ness by the Secretary of Agriculture under subsection (1)



1 with respect to the pesticide chemical named in the petition,  
2 that the petition be referred to an advisory committee, or the  
3 Secretary within such period otherwise deems such referral  
4 necessary, the Secretary shall forthwith submit the petition  
5 and other data before him to an advisory committee to be  
6 appointed in accordance with subsection (g) of this section.  
7 As soon as practicable after such referral, but not later than  
8 sixty days thereafter, unless extended as hereinafter provided,  
9 the committee shall, after independent study of the data  
10 submitted to it by the Secretary and other data before it,  
11 certify to the Secretary a report and recommendations on the  
12 proposal in the petition to the Secretary, together with all  
13 underlying data and a statement of the reasons or basis for  
14 the recommendations. The sixty-day period provided for  
15 herein may be extended by the advisory committee for an  
16 additional thirty days if the advisory committee deems this  
17 necessary. Within thirty days after such certification, the  
18 Secretary shall, after giving due consideration to all data  
19 then before him, including such report, recommendations,  
20 underlying data, and statement, by order make public a  
21 regulation—

22 “(A) establishing a tolerance for the pesticide  
23 chemical named in the petition for the purposes for  
24 which it is so certified as useful; or

1           “(B) exempting the pesticide chemical from the  
2       necessity of a tolerance for such purposes.

3       “(4) The regulations published under paragraph (2)  
4       or (3) of this subsection will be effective upon publication.

5       “(5) Within thirty days after publication, any person  
6       adversely affected by a regulation published pursuant to  
7       paragraph (2) or (3) of this subsection, or pursuant to  
8       subsection (e), may file objections thereto with the Secre-  
9       tary, specifying with particularity the provisions of the  
10      regulation deemed objectionable, stating reasonable grounds  
11      therefor, and requesting a public hearing upon such objec-  
12      tions. A copy of the objections filed by a person other than  
13      the petitioner shall be served on the petitioner, if the regu-  
14      lation was issued pursuant to a petition. The petitioner shall  
15      have two weeks to make a written reply to the objections.  
16      The Secretary shall thereupon, after due notice, hold such  
17      public hearing for the purpose of receiving evidence relevant  
18      and material to the issues raised by such objections. Any  
19      report, recommendations, underlying data, and reasons certi-  
20      fied to the Secretary by an advisory committee shall be made  
21      a part of the record of the hearing, if relevant and material,  
22      subject to the provisions of section 7 (c) of the Adminis-  
23      trative Procedure Act (5 U. S. C., sec. 1006 (c)). The  
24      National Academy of Sciences shall designate a member of  
25      the advisory committee to appear and testify at any such

1 hearing with respect to the report and recommendations of  
2 such committee upon request of the Secretary, the petitioner,  
3 or the officer conducting the hearing: *Provided*, That this  
4 shall not preclude any other member of the advisory com-  
5 mittee from appearing and testifying at such hearing. As  
6 soon as practicable after completion of the hearing, the  
7 Secretary shall act upon such objections and by order make  
8 public a regulation. Such regulation shall be based only on  
9 substantial evidence of record at such hearing, including any  
10 report, recommendations, underlying data, and reasons cer-  
11 tified to the Secretary by an advisory committee, and shall  
12 set forth detailed findings of fact upon which the regulation  
13 is based. No such order shall take effect prior to the nine-  
14 tieth day after its publication, unless the Secretary finds that  
15 emergency conditions exist necessitating an earlier effective  
16 date, in which event the Secretary shall specify in the order  
17 his findings as to such conditions.

18 “(e) The Secretary may at any time, upon his own  
19 initiative or upon the request of any interested person, pro-  
20 pose the issuance of a regulation establishing a tolerance for  
21 a pesticide chemical or exempting it from the necessity of  
22 a tolerance. Thirty days after publication of such a pro-  
23 posal, the Secretary may by order publish a regulation based  
24 upon the proposal which shall become effective upon publi-



1 cation unless within such thirty-day period a person, who has  
2 registered, or who has submitted an application for the  
3 registration of, an economic poison under the Federal In-  
4 secticide, Fungicide, and Rodenticide Act containing the  
5 pesticide chemical named in the proposal, requests that  
6 the proposal be referred to an advisory committee. In the  
7 event of such a request, the Secretary shall forthwith sub-  
8 mit the proposal and other relevant data before him to an  
9 advisory committee to be appointed in accordance with  
10 subsection (g) of this section. As soon as practicable after  
11 such referral, but not later than sixty days thereafter, unless  
12 extended as hereinafter provided, the committee shall, after  
13 independent study of the data submitted to it by the Secre-  
14 tary and other data before it, certify to the Secretary a  
15 report and recommendations on the proposal together with  
16 all underlying data and a statement of the reasons or basis  
17 for the recommendations. The sixty-day period provided for  
18 herein may be extended by the advisory committee for  
19 an additional thirty days if the advisory committee deems  
20 this necessary. Within thirty days after such certification,  
21 the Secretary may, after giving due consideration to all  
22 data before him, including such report, recommendations,  
23 underlying data and statement, by order publish a regulation  
24 establishing a tolerance for the pesticide chemical named  
25 in the proposal or exempting it from the necessity of a toler-



1   ance which shall become effective upon publication. Regu-  
2   lations issued under this subsection shall upon publication be  
3   subject to paragraph (5) or subsection (d).

4       “(f) All data submitted to the Secretary or to an  
5   advisory committee in support of a petition under this section  
6   shall be considered confidential by the Secretary and by  
7   such advisory committee until publication of a regulation  
8   under paragraph (2) or (3) of subsection (d) of this  
9   section. Until such publication, such data shall not be  
10  revealed to any person other than those authorized by the  
11  Secretary or by an advisory committee in the carrying out  
12  of their official duties under this section.

13       “(g) Whenever the referral of a petition or proposal  
14  to an advisory committee is requested under this section, or  
15  the Secretary otherwise deems such referral necessary the  
16  Secretary shall forthwith appoint a committee of competent  
17  experts to review the petition or proposal and to make a  
18  report and recommendations thereon. Each such advisory  
19  committee shall be composed of experts, qualified in the  
20  subject matter of the petition and of adequately diversified  
21  professional background selected by the National Academy  
22  of Sciences and shall include one or more representatives  
23  from land-grant colleges. The size of the committee shall  
24  be determined by the Secretary. Members of an advisory  
25  committee shall receive as compensation for their services

1 a reasonable per diem, which the Secretary shall by rules  
2 and regulations prescribe, for time actually spent in the  
3 work of the committee, and shall in addition be reimbursed  
4 for their necessary traveling and subsistence expenses while  
5 so serving away from their places of residence. The mem-  
6 bers shall not be subject to any other provisions of law  
7 regarding the appointment and compensation of employees  
8 of the United States. The Secretary shall furnish the com-  
9 mittee with adequate clerical and other assistance, and shall  
10 by rules and regulations prescribe the procedure to be  
11 followed by the committee.

12 “(h) A person who has filed a petition or who has  
13 requested the referral of a proposal to an advisory committee  
14 in accordance with the provisions of this section, as well  
15 as representatives of the Department of Health, Education,  
16 and Welfare, shall have the right to consult with any  
17 advisory committee provided for in subsection (g) in con-  
18 nection with the petition or proposal.

19 “(i) (1) In a case of actual controversy as to the  
20 validity of any order under subsection (d) (5), (e), or (1)  
21 any person who will be adversely affected by such order may  
22 obtain judicial review by filing in the United States Court  
23 of Appeals for the circuit wherein such person resides or  
24 has his principal place of business, or in the United States  
25 Court of Appeals for the District of Columbia Circuit, within



1 sixty days after the entry of such order, a petition praying  
2 that the order be set aside in whole or in part.

3 “(2) In the case of a petition with respect to an order  
4 under subsection (d) (5) or (e), a copy of the petition  
5 shall be forthwith served upon the Secretary, or upon any  
6 officer designated by him for that purpose, and thereupon  
7 the Secretary shall certify and file in the court a transcript  
8 of the proceedings and the record on which he based his  
9 order. Upon such filing, the court shall have exclusive juris-  
10 diction to affirm or set aside the order complained of in  
11 whole or in part. The findings of the Secretary with re-  
12 spect to questions of fact shall be sustained if supported by  
13 substantial evidence when considered on the record as a  
14 whole, including any report and recommendation of an  
15 advisory committee.

16 “(3) In the case of a petition with respect to an order  
17 under subsection (1), a copy of the petition shall be forth-  
18 with served upon the Secretary of Agriculture, or upon any  
19 officer designated by him for that purpose, and thereupon the  
20 Secretary shall certify and file in the court a transcript of  
21 the proceedings and the record on which he based his order.  
22 Upon such filing, the court shall have exclusive jurisdiction  
23 to affirm or set aside the order complained of in whole or in  
24 part. The findings of the Secretary with respect to ques-

1 tions of fact shall be sustained if supported by substantial  
2 evidence when considered on the record as a whole.

3 “(4) If application is made to the court for leave to  
4 adduce additional evidence, the court may order such addi-  
5 tional evidence to be taken before the Secretary of Health,  
6 Education, and Welfare or the Secretary of Agriculture, as  
7 the case may be, and to be adduced upon the hearing in such  
8 manner and upon such terms and conditions as to the court  
9 may seem proper, if such evidence is material and there were  
10 reasonable grounds for failure to adduce such evidence in the  
11 proceedings below. The Secretary of Health, Education,  
12 and Welfare or the Secretary of Agriculture, as the case may  
13 be, may modify his findings as to the facts and order by  
14 reason of the additional evidence so taken, and shall file with  
15 the court such modified findings and order.

16 “(5) The judgment of the court affirming or setting  
17 aside, in whole or in part, any order under this section  
18 shall be final, subject to review by the Supreme Court of  
19 the United States upon certiorari or certification as pro-  
20 vided in section 1254 of title 28 of the United States  
21 Code. The commencement of proceedings under this sec-  
22 tion shall not, unless specifically ordered by the court to  
23 the contrary, operate as a stay of an order. The courts  
24 shall advance on the docket and expedite the disposition  
25 of all causes filed therein pursuant to this section.



1       “(j) The Secretary may, upon the request of any  
2 person who has obtained an experimental permit for a  
3 pesticide chemical under the Federal Insecticide, Fungi-  
4 cide, and Rodenticide Act or upon his own initiative, es-  
5 tablish a temporary tolerance for the pesticide chemical  
6 for the uses covered by the permit whenever in his judg-  
7 ment such action is deemed necessary to protect the public  
8 health, or may temporarily exempt such pesticide chemical  
9 from a tolerance. In establishing such a tolerance, the Sec-  
10 retary shall give due regard to the necessity for experi-  
11 mental work in developing an adequate, wholesome, and  
12 economical food supply and to the limited hazard to the  
13 public health involved in such work when conducted in  
14 accordance with applicable regulations under the Federal  
15 Insecticide, Fungicide, and Rodenticide Act.

16       “(k) Regulations affecting pesticide chemicals in or on  
17 raw agricultural commodities which are promulgated under  
18 the authority of section 406 (a) upon the basis of public  
19 hearings instituted before January 1, 1953, in accordance  
20 with section 701 (e), shall be deemed to be regulations  
21 under this section and shall be subject to amendment or  
22 repeal as provided in subsection (m).

23       “(l) The Secretary of Agriculture, upon request of any  
24 person who has registered, or who has submitted an appli-  
25 cation for the registration of, an economic poison under the

1 Federal Insecticide, Fungicide, and Rodenticide Act, and  
2 whose request is accompanied by a copy of a petition filed  
3 by such person under subsection (d) (1) with respect to  
4 a pesticide chemical which constitutes, or is an ingredient  
5 of, such economic poison, shall, within thirty days or within  
6 sixty days if upon notice prior to the termination of such  
7 thirty days the Secretary deems it necessary to postpone  
8 action for such period, on the basis of data before him,  
9 either—

10 “(1) certify to the Secretary of Health, Education,  
11 and Welfare that such pesticide chemical is useful for  
12 the purpose for which a tolerance or exemption is  
13 sought; or

14 “(2) notify the person requesting the certification  
15 of his proposal to certify that the pesticide chemical  
16 does not appear to be useful for the purpose for which  
17 a tolerance or exemption is sought, or appears to be  
18 useful for only some of the purposes for which a toler-  
19 ance or exemption is sought.

20 In the event that the Secretary of Agriculture takes the  
21 action described in clause (2) of the preceding sentence,  
22 the person requesting the certification, within one week  
23 after receiving the proposed certification, may either (A)  
24 request the Secretary of Agriculture to certify to the Secre-  
25 tary of Health, Education, and Welfare on the basis of the

1 proposed certification; (B) request a hearing on the pro-  
2 posed certification or the parts thereof objected to; or (C)  
3 request both such certification and such hearing. If no such  
4 action is taken, the Secretary may by order make the  
5 certification as proposed. In the event that the action de-  
6 scribed in clause (A) or (C) is taken, the Secretary shall  
7 by order make the certification as proposed with respect to  
8 such parts thereof as are requested. In the event a hearing  
9 is requested, the Secretary of Agriculture shall provide  
10 opportunity for a prompt hearing. The certification of the  
11 Secretary of Agriculture as the result of such hearing shall  
12 be made by order and shall be based only on substantial  
13 evidence of record at the hearing and shall set forth detailed  
14 findings of fact. In no event shall the time elapsing between  
15 the making of a request for a certification under this sub-  
16 section and final certification by the Secretary of Agriculture  
17 exceed one hundred and sixty days. The Secretary shall  
18 submit to the Secretary of Health, Education, and Welfare  
19 with any certification of usefulness under this subsection  
20 an opinion, based on the data before him, whether the tol-  
21 erance or exemption proposed by the petitioner reasonably  
22 reflects the amount of residue likely to result when the pesti-  
23 cide chemical is used in the manner proposed for the purpose  
24 for which the certification is made. The Secretary of Agricul-  
25 ture, after due notice and opportunity for public hearing,



1 is authorized to promulgate rules and regulations for carrying  
2 out the provisions of this subsection.

3 “(m) The Secretary of Health, Education, and Welfare  
4 shall prescribe by regulations the procedure by which regu-  
5 lations under this section may be amended or repealed, and  
6 such procedure shall conform to the procedure provided in  
7 this section for the promulgation of regulations establishing  
8 tolerances, including the appointment of advisory committees  
9 and the procedure for referring petitions to such committees.

10 “(n) The provisions of section 303 (c) of the Federal  
11 Food, Drug, and Cosmetic Act with respect to the furnish-  
12 ing of guaranties shall be applicable to raw agricultural com-  
13 modities covered by this section.”

14 SEC. 4. There are hereby authorized to be appropriated,  
15 out of any moneys in the Treasury not otherwise appro-  
16 priated, such sums as may be necessary for the purpose and  
17 administration of this Act.

18 SEC. 5. This Act shall take effect upon the date of its  
19 enactment, except that with respect to pesticide chemicals  
20 for which tolerances or exemptions have not been established  
21 under section 408 of the Federal Food, Drug, and Cosmetic  
22 Act, the amendment to section 402 (a) of such Act made  
23 by section 2 of this Act shall not be effective—

24 (1) for the period of one year following the date  
25 of the enactment of this Act; or



1           (2) for such additional period following such period  
2       of one year, but not extending beyond two years after  
3       the date of the enactment of this Act, as the Secretary  
4       of Health, Education, and Welfare may prescribe on the  
5       basis of a finding that conditions exist which necessitate  
6       the prescribing of such additional period.

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## A BILL

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To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

---

By Mr. MILLER of Nebraska

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JANUARY 11, 1954

Referred to the Committee on Interstate and Foreign  
Commerce







83D CONGRESS  
2D SESSION

# S. 2868

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 22), 1954

Mr. AIKEN introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That section 201 of the Federal Food, Drug, and Cosmetic  
4       Act is amended by adding at the end thereof the following  
5       new paragraphs:  
6       “(q) The term ‘pesticide chemical’ means any sub-  
7       stance which, alone, in chemical combination or in formu-  
8       lation with one or more other substances, is an ‘economic  
9       poison’ within the meaning of the Federal Insecticide,  
10      Fungicide, and Rodenticide Act (7 U. S. C., secs.

1 135-135k) as now in force or as hereafter amended, and  
2 which is used in the production, storage, or transportation  
3 of raw agricultural commodities.

4 “(r) The term ‘raw agricultural commodity’ means  
5 any food in its raw or natural state, including all fruits that  
6 are washed, colored, or otherwise treated in their unpeeled  
7 natural form prior to marketing.”

8 SEC. 2. Clause (2) of section 402 (a) of the Federal  
9 Food, Drug, and Cosmetic Act is amended to read as follows:

10 “(2) if it bears or contains any added poisonous or  
11 added deleterious substance, except a pesticide chemical  
12 in or on a raw agricultural commodity, which is unsafe  
13 within the meaning of section 406, or if it is a raw agri-  
14 cultural commodity and it bears or contains a pesticide  
15 chemical which is unsafe within the meaning of section  
16 408 (a) ;”.

17 SEC. 3. Chapter IV of the Federal Food, Drug, and Cos-  
18 metic Act is amended by adding at the end thereof the fol-  
19 lowing new section:

20 “TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW  
21 AGRICULTURAL COMMODITIES

22 “SEC. 408. (a) Any poisonous or deleterious pesticide  
23 chemical, or any pesticide chemical which is not generally  
24 recognized, among experts qualified by scientific training and  
25 experience to evaluate the safety of pesticide chemicals, as

1 safe for use, added to a raw agricultural commodity, shall be  
2 deemed unsafe for the purposes of the application of clause  
3 (2) of section 402 (a) unless—

4 “(1) a tolerance for such pesticide chemical in or  
5 on the raw agricultural commodity has been prescribed  
6 by the Secretary of Health, Education, and Welfare  
7 under this section and the quantity of such pesticide  
8 chemical in or on the raw agricultural commodity is  
9 within the limits of the tolerance so prescribed; or

10 “(2) with respect to use in or on such raw agri-  
11 cultural commodity, the pesticide chemical has been  
12 exempted from the requirement of a tolerance by the  
13 Secretary under this section.

14 While a tolerance or exemption from tolerance is in effect  
15 for a pesticide chemical with respect to any raw agricultural  
16 commodity, such raw agricultural commodity shall not, by  
17 reason of bearing or containing any added amount of such  
18 pesticide chemical, be considered to be adulterated within  
19 the meaning of clause (1) of section 402 (a).

20 “(b) The Secretary shall promulgate regulations es-  
21 tablishing tolerances with respect to the use in or on raw  
22 agricultural commodities of poisonous or deleterious pesti-  
23 cide chemicals and of pesticide chemicals which are not gen-  
24 erally recognized, among experts qualified by scientific train-  
25 ing and experience to evaluate the safety of pesticide chemi-



1 cal, as safe for use, to the extent necessary to protect the  
2 public health. In establishing any such regulation, the  
3 Secretary shall give appropriate consideration, among other  
4 relevant factors, (1) to the necessity for the production  
5 of an adequate, wholesome, and economical food supply;  
6 (2) to the other ways in which the consumer may be af-  
7 fected by the same pesticide chemical or by other related  
8 substances that are poisonous or deleterious; and (3) to  
9 the opinion of the Secretary of Agriculture as submitted with  
10 a certification of usefulness under subsection (1) of this  
11 section. Such regulations shall be promulgated in the man-  
12 ner prescribed in subsection (d) or (e) of this section. In  
13 carrying out the provisions of this section relating to the  
14 establishment of tolerances, the Secretary may establish  
15 the tolerance applicable with respect to the use of any  
16 pesticide chemical in or on any raw agricultural commodity  
17 at zero level if the scientific data before the Secretary does  
18 not justify the establishment of a greater tolerance.

19 “(c) The Secretary shall promulgate regulations ex-  
20 empting any pesticide chemical from the necessity of a  
21 tolerance with respect to use in or on any or all raw agricul-  
22 tural commodities when such a tolerance is not necessary to  
23 protect the public health. Such regulations shall be promul-  
24 gated in the manner prescribed in subsection (d) or (e)  
25 of this section.

1 “(d) (1) Any person who has registered, or who has  
2 submitted an application for the registration of, an economic  
3 poison under the Federal Insecticide, Fungicide, and Roden-  
4 ticide Act may file with the Secretary of Health, Education,  
5 and Welfare, a petition proposing the issuance of a regulation  
6 establishing a tolerance for a pesticide chemical which consti-  
7 tutes, or is an ingredient of, such economic poison, or  
8 exempting the pesticide chemical from a tolerance. The  
9 petition shall contain data showing—

10 “(A) the name, chemical identity, and composition  
11 of the pesticide chemical;

12 “(B) the amount, frequency, and time of application  
13 of the pesticide chemical;

14 “(C) full reports of investigations made with respect  
15 to the safety of the pesticide chemical;

16 “(D) the results of tests on the amount of residue  
17 remaining, including a description of the analytical  
18 methods used;

19 “(E) practicable methods for removing residue  
20 which exceeds any proposed tolerance;

21 “(F) proposed tolerances for the pesticide chemical  
22 if tolerances are proposed; and

23 “(G) reasonable grounds in support of the petition.

24 Samples of the pesticide chemical shall be furnished to the  
25 Secretary upon request. Notice of the filing of such petition

1 shall be published in general terms by the Secretary within  
2 thirty days after filing. Such notice shall include the  
3 analytical methods available for the determination of the  
4 residue of the pesticide chemical for which a tolerance or  
5 exemption is proposed.

6 “(2) Within ninety days after a certification of useful-  
7 ness by the Secretary of Agriculture under subsection (1)  
8 with respect to the pesticide chemical named in the petition,  
9 the Secretary shall, after giving due consideration to the data  
10 submitted in the petition or otherwise before him, by order  
11 make public a regulation—

12 “(A) establishing a tolerance for the pesticide  
13 chemical named in the petition for the purposes for  
14 which it is so certified as useful, or

15 “(B) exempting the pesticide chemical from the  
16 necessity of a tolerance for such purposes,

17 unless within such ninety-day period the person filing the  
18 petition requests that the petition be referred to an advisory  
19 committee or the Secretary within such period otherwise  
20 deems such referral necessary, in either of which event the  
21 provisions of paragraph (3) of this subsection shall apply in  
22 lieu hereof.

23 “(3) In the event that the person filing the petition  
24 requests, within ninety days after a certification of useful-  
25 ness by the Secretary of Agriculture under subsection (1)



1 with respect to the pesticide chemical named in the petition,  
2 that the petition be referred to an advisory committee, or the  
3 Secretary within such period otherwise deems such referral  
4 necessary, the Secretary shall forthwith submit the petition  
5 and other data before him to an advisory committee to be  
6 appointed in accordance with subsection (g) of this section.  
7 As soon as practicable after such referral, but not later than  
8 sixty days thereafter, unless extended as hereinafter provided,  
9 the committee shall, after independent study of the data  
10 submitted to it by the Secretary and other data before it,  
11 certify to the Secretary a report and recommendations on the  
12 proposal in the petition to the Secretary, together with all  
13 underlying data and a statement of the reasons or basis for  
14 the recommendations. The sixty-day period provided for  
15 herein may be extended by the advisory committee for an  
16 additional thirty days if the advisory committee deems this  
17 necessary. Within thirty days after such certification, the  
18 Secretary shall, after giving due consideration to all data  
19 then before him, including such report, recommendations,  
20 underlying data, and statement, by order make public a  
21 regulation—

22 “(A) establishing a tolerance for the pesticide  
23 chemical named in the petition for the purposes for  
24 which it is so certified as useful; or

1           “(B) exempting the pesticide chemical from the  
2           necessity of a tolerance for such purposes.

3           “(4) The regulations published under paragraph (2)  
4           or (3) of this subsection will be effective upon publication.

5           “(5) Within thirty days after publication, any person  
6           adversely affected by a regulation published pursuant to  
7           paragraph (2) or (3) of this subsection, or pursuant to  
8           subsection (e), may file objections thereto with the Secre-  
9           tary, specifying with particularity the provisions of the  
10          regulation deemed objectionable, stating reasonable grounds  
11          therefor, and requesting a public hearing upon such objec-  
12          tions. A copy of the objections filed by a person other than  
13          the petitioner shall be served on the petitioner, if the regu-  
14          lation was issued pursuant to a petition. The petitioner shall  
15          have two weeks to make a written reply to the objections.  
16          The Secretary shall thereupon, after due notice, hold such  
17          public hearing for the purpose of receiving evidence relevant  
18          and material to the issues raised by such objections. Any  
19          report, recommendations, underlying data, and reasons certi-  
20          fied to the Secretary by an advisory committee shall be made  
21          a part of the record of the hearing, if relevant and material,  
22          subject to the provisions of section 7 (c) of the Adminis-  
23          trative Procedure Act (5 U. S. C., sec. 1006 (c)). The  
24          National Academy of Sciences shall designate a member of  
25          the advisory committee to appear and testify at any such

1 hearing with respect to the report and recommendations of  
2 such committee upon request of the Secretary, the petitioner,  
3 or the officer conducting the hearing: *Provided*, That this  
4 shall not preclude any other member of the advisory com-  
5 mittee from appearing and testifying at such hearing. As  
6 soon as practicable after completion of the hearing, the  
7 Secretary shall act upon such objections and by order make  
8 public a regulation. Such regulation shall be based only on  
9 substantial evidence of record at such hearing, including any  
10 report, recommendations, underlying data, and reasons cer-  
11 tified to the Secretary by an advisory committee, and shall  
12 set forth detailed findings of fact upon which the regulation  
13 is based. No such order shall take effect prior to the nine-  
14 tieth day after its publication, unless the Secretary finds that  
15 emergency conditions exist necessitating an earlier effective  
16 date, in which event the Secretary shall specify in the order  
17 his findings as to such conditions.

18 “(e) The Secretary may at any time, upon his own  
19 initiative or upon the request of any interested person, pro-  
20 pose the issuance of a regulation establishing a tolerance for  
21 a pesticide chemical or exempting it from the necessity of  
22 a tolerance. Thirty days after publication of such a pro-  
23 posal, the Secretary may by order publish a regulation based  
24 upon the proposal which shall become effective upon publi-



1 cation unless within such thirty-day period a person, who has  
2 registered, or who has submitted an application for the  
3 registration of, an economic poison under the Federal In-  
4 secticide, Fungicide, and Rodenticide Act containing the  
5 pesticide chemical named in the proposal, requests that  
6 the proposal be referred to an advisory committee. In the  
7 event of such a request, the Secretary shall forthwith sub-  
8 mit the proposal and other relevant data before him to an  
9 advisory committee to be appointed in accordance with  
10 subsection (g) of this section. As soon as practicable after  
11 such referral, but not later than sixty days thereafter, unless  
12 extended as hereinafter provided, the committee shall, after  
13 independent study of the data submitted to it by the Secre-  
14 tary and other data before it, certify to the Secretary a  
15 report and recommendations on the proposal together with  
16 all underlying data and a statement of the reasons or basis  
17 for the recommendations. The sixty-day period provided for  
18 herein may be extended by the advisory committee for  
19 an additional thirty days if the advisory committee deems  
20 this necessary. Within thirty days after such certification,  
21 the Secretary may, after giving due consideration to all  
22 data before him, including such report, recommendations,  
23 underlying data and statement, by order publish a regulation  
24 establishing a tolerance for the pesticide chemical named  
25 in the proposal or exempting it from the necessity of a toler-

1   ance which shall become effective upon publication. Regu-  
2   lations issued under this subsection shall upon publication be  
3   subject to paragraph (5) or subsection (d).

4       “(f) All data submitted to the Secretary or to an  
5   advisory committee in support of a petition under this section  
6   shall be considered confidential by the Secretary and by  
7   such advisory committee until publication of a regulation  
8   under paragraph (2) or (3) of subsection (d) of this  
9   section. Until such publication, such data shall not be  
10  revealed to any person other than those authorized by the  
11  Secretary or by an advisory committee in the carrying out  
12  of their official duties under this section.

13       “(g) Whenever the referral of a petition or proposal  
14  to an advisory committee is requested under this section, or  
15  the Secretary otherwise deems such referral necessary the  
16  Secretary shall forthwith appoint a committee of competent  
17  experts to review the petition or proposal and to make a  
18  report and recommendations thereon. Each such advisory  
19  committee shall be composed of experts, qualified in the  
20  subject matter of the petition and of adequately diversified  
21  professional background selected by the National Academy  
22  of Sciences and shall include one or more representatives  
23  from land-grant colleges. The size of the committee shall  
24  be determined by the Secretary. Members of an advisory  
25  committee shall receive as compensation for their services

1 a reasonable per diem, which the Secretary shall by rules  
2 and regulations prescribe, for time actually spent in the  
3 work of the committee, and shall in addition be reimbursed  
4 for their necessary traveling and subsistence expenses while  
5 so serving away from their places of residence. The mem-  
6 bers shall not be subject to any other provisions of law  
7 regarding the appointment and compensation of employees  
8 of the United States. The Secretary shall furnish the com-  
9 mittee with adequate clerical and other assistance, and shall  
10 by rules and regulations prescribe the procedure to be  
11 followed by the committee.

12 “(h) A person who has filed a petition or who has  
13 requested the referral of a proposal to an advisory committee  
14 in accordance with the provisions of this section, as well  
15 as representatives of the Department of Health, Education,  
16 and Welfare, shall have the right to consult with any  
17 advisory committee provided for in subsection (g) in con-  
18 nection with the petition or proposal.

19 “(i) (1) In a case of actual controversy as to the  
20 validity of any order under subsection (d) (5), (e), or (1)  
21 any person who will be adversely affected by such order may  
22 obtain judicial review by filing in the United States Court  
23 of Appeals for the circuit wherein such person resides or  
24 has his principal place of business, or in the United States  
25 Court of Appeals for the District of Columbia Circuit, within



1 sixty days after the entry of such order, a petition praying  
2 that the order be set aside in whole or in part.

3 “(2) In the case of a petition with respect to an order  
4 under subsection (d) (5) or (e), a copy of the petition  
5 shall be forthwith served upon the Secretary, or upon any  
6 officer designated by him for that purpose, and thereupon  
7 the Secretary shall certify and file in the court a transcript  
8 of the proceedings and the record on which he based his  
9 order. Upon such filing, the court shall have exclusive juris-  
10 diction to affirm or set aside the order complained of in  
11 whole or in part. The findings of the Secretary with re-  
12 spect to questions of fact shall be sustained if supported by  
13 substantial evidence when considered on the record as a  
14 whole, including any report and recommendation of an  
15 advisory committee.

16 “(3) In the case of a petition with respect to an order  
17 under subsection (1), a copy of the petition shall be forth-  
18 with served upon the Secretary of Agriculture, or upon any  
19 officer designated by him for that purpose, and thereupon the  
20 Secretary shall certify and file in the court a transcript of  
21 the proceedings and the record on which he based his order.  
22 Upon such filing, the court shall have exclusive jurisdiction  
23 to affirm or set aside the order complained of in whole or in  
24 part. The findings of the Secretary with respect to ques-

1 tions of fact shall be sustained if supported by substantial  
2 evidence when considered on the record as a whole.

3 “(4) If application is made to the court for leave to  
4 adduce additional evidence, the court may order such addi-  
5 tional evidence to be taken before the Secretary of Health,  
6 Education, and Welfare or the Secretary of Agriculture, as  
7 the case may be, and to be adduced upon the hearing in such  
8 manner and upon such terms and conditions as to the court  
9 may seem proper, if such evidence is material and there were  
10 reasonable grounds for failure to adduce such evidence in the  
11 proceedings below. The Secretary of Health, Education,  
12 and Welfare or the Secretary of Agriculture, as the case may  
13 be, may modify his findings as to the facts and order by  
14 reason of the additional evidence so taken, and shall file with  
15 the court such modified findings and order.

16 “(5) The judgment of the court affirming or setting  
17 aside, in whole or in part, any order under this section  
18 shall be final, subject to review by the Supreme Court of  
19 the United States upon certiorari or certification as pro-  
20 vided in section 1254 of title 28 of the United States  
21 Code. The commencement of proceedings under this sec-  
22 tion shall not, unless specifically ordered by the court to  
23 the contrary, operate as a stay of an order. The courts  
24 shall advance on the docket and expedite the disposition  
25 of all causes filed therein pursuant to this section.

1       “(j) The Secretary may, upon the request of any  
2 person who has obtained an experimental permit for a  
3 pesticide chemical under the Federal Insecticide, Fungi-  
4 cide, and Rodenticide Act or upon his own initiative, es-  
5 tablish a temporary tolerance for the pesticide chemical  
6 for the uses covered by the permit whenever in his judg-  
7 ment such action is deemed necessary to protect the public  
8 health, or may temporarily exempt such pesticide chemical  
9 from a tolerance. In establishing such a tolerance, the Sec-  
10 retary shall give due regard to the necessity for experi-  
11 mental work in developing an adequate, wholesome, and  
12 economical food supply and to the limited hazard to the  
13 public health involved in such work when conducted in  
14 accordance with applicable regulations under the Federal  
15 Insecticide, Fungicide, and Rodenticide Act.

16       “(k) Regulations affecting pesticide chemicals in or on  
17 raw agricultural commodities which are promulgated under  
18 the authority of section 406 (a) upon the basis of public  
19 hearings instituted before January 1, 1953, in accordance  
20 with section 701 (e), shall be deemed to be regulations  
21 under this section and shall be subject to amendment or  
22 repeal as provided in subsection (m).

23       “(l) The Secretary of Agriculture, upon request of any  
24 person who has registered, or who has submitted an appli-  
25 cation for the registration of, an economic poison under the



1 Federal Insecticide, Fungicide, and Rodenticide Act, and  
2 whose request is accompanied by a copy of a petition filed  
3 by such person under subsection (d) (1) with respect to  
4 a pesticide chemical which constitutes, or is an ingredient  
5 of, such economic poison, shall, within thirty days or within  
6 sixty days if upon notice prior to the termination of such  
7 thirty days the Secretary deems it necessary to postpone  
8 action for such period, on the basis of data before him,  
9 either—

10 “(1) certify to the Secretary of Health, Education,  
11 and Welfare that such pesticide chemical is useful for  
12 the purpose for which a tolerance or exemption is  
13 sought; or

14 “(2) notify the person requesting the certification  
15 of his proposal to certify that the pesticide chemical  
16 does not appear to be useful for the purpose for which  
17 a tolerance or exemption is sought, or appears to be  
18 useful for only some of the purposes for which a toler-  
19 ance or exemption is sought.

20 In the event that the Secretary of Agriculture takes the  
21 action described in clause (2) of the preceding sentence;  
22 the person requesting the certification, within one week  
23 after receiving the proposed certification, may either (A)  
24 request the Secretary of Agriculture to certify to the Secre-  
25 tary of Health, Education, and Welfare on the basis of the

1 proposed certification; (B) request a hearing on the pro-  
2 posed certification or the parts thereof objected to; or (C)  
3 request both such certification and such hearing. If no such  
4 action is taken, the Secretary may by order make the  
5 certification as proposed. In the event that the action de-  
6 scribed in clause (A) or (C) is taken, the Secretary shall  
7 by order make the certification as proposed with respect to  
8 such parts thereof as are requested. In the event a hearing  
9 is requested, the Secretary of Agriculture shall provide  
10 opportunity for a prompt hearing. The certification of the  
11 Secretary of Agriculture as the result of such hearing shall  
12 be made by order and shall be based only on substantial  
13 evidence of record at the hearing and shall set forth detailed  
14 findings of fact. In no event shall the time elapsing between  
15 the making of a request for a certification under this sub-  
16 section and final certification by the Secretary of Agriculture  
17 exceed one hundred and sixty days. The Secretary shall  
18 submit to the Secretary of Health, Education, and Welfare  
19 with any certification of usefulness under this subsection  
20 an opinion, based on the data before him, whether the tol-  
21 erance or exemption proposed by the petitioner reasonably  
22 reflects the amount of residue likely to result when the pesti-  
23 cide chemical is used in the manner proposed for the purpose  
24 for which the certification is made. The Secretary of Agricul-  
25 ture, after due notice and opportunity for public hearing,

1 is authorized to promulgate rules and regulations for carrying  
2 out the provisions of this subsection.

3 “(m) The Secretary of Health, Education, and Welfare  
4 shall prescribe by regulations the procedure by which regu-  
5 lations under this section may be amended or repealed, and  
6 such procedure shall conform to the procedure provided in  
7 this section for the promulgation of regulations establishing  
8 tolerances, including the appointment of advisory committees  
9 and the procedure for referring petitions to such committees.

10 “(n) The provisions of section 303 (c) of the Federal  
11 Food, Drug, and Cosmetic Act with respect to the furnish-  
12 ing of guaranties shall be applicable to raw agricultural com-  
13 modities covered by this section.”

14 SEC. 4. There are hereby authorized to be appropriated,  
15 out of any moneys in the Treasury not otherwise appro-  
16 priated, such sums as may be necessary for the purpose and  
17 administration of this Act.

18 SEC. 5. This Act shall take effect upon the date of its  
19 enactment, except that with respect to pesticide chemicals  
20 for which tolerances or exemptions have not been established  
21 under section 408 of the Federal Food, Drug, and Cosmetic  
22 Act, the amendment to section 402 (a) of such Act made  
23 by section 2 of this Act shall not be effective—

24 (1) for the period of one year following the date  
25 of the enactment of this Act; or



1           (2) for such additional period following such period  
2 of one year, but not extending beyond two years after  
3 the date of the enactment of this Act, as the Secretary  
4 of Health, Education, and Welfare may prescribe on the  
5 basis of a finding that conditions exist which necessitate  
6 the prescribing of such additional period.

## A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

By Mr. AIKEN

FEBRUARY 2 (legislative day, JANUARY 22), 1954  
Read twice and referred to the Committee on Labor  
and Public Welfare







# Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

Issued March 9, 1954

For actions of March 8, 1954

83rd-2nd, No. 43

OFFICE OF BUDGET AND FINANCE  
(For Department Staff Only)

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HIGHLIGHTS: House passed road authorization bill. House committees voted to report bills to regulate pesticide chemicals and to authorize land banks to buy FFMC assets. Rep. Cooley urged President not to approve Mexican farm labor bill. Senate passed forest-grazing policies bill. Sen. Butler, Nebr., claimed administration inherited commodity surpluses and outlined storage program. Sen. Humphrey claimed Minn. businessmen favor high price supports. Senate debated Hawaii statehood bill. Sen. Humphrey introduced and discussed bill to distribute dairy surpluses to needy.

## HOUSE

1. ROAD AUTHORIZATIONS. Passed without amendment H. R. 8127, to authorize road appropriations for the fiscal years 1956 and 1957 (pp. 2675-707). The bill includes authorization of \$22,500,000 for forest highways for each of these years, and \$22,500,000 for forest roads and trails for each of the years. It also provides that hereafter funds available for forest development roads and trails shall also be available for vehicular parking areas.
2. PESTICIDE CHEMICALS. The Interstate and Foreign Commerce Committee voted to report (but did not actually report) H. R. 7125 with amendments. The bill would prohibit the use of pesticide chemicals as additives to raw agricultural commodities unless the quantity does not exceed the limits of tolerance as established by HEW or is exempted from the requirement of tolerance by the Secretary of HEW. It also provides for regulations for classifications of pesticide chemicals according to the degree of tolerance, etc. (p. D246.)
3. FARM LOANS. The Agriculture Committee voted to report (but did not actually report) H. R. 6711, to authorize Federal land banks to make a bulk purchase of remaining assets of the Federal Farm Mortgage Corporation, except cash, accounts receivable, and reserved mineral interests (p. D245).



4. DAIRY PRICE SUPPORTS. The Agriculture Committee received the report of its Dairy Subcommittee (p. D246).
5. FARM LABOR. Rep. Cooley urged that the President not approve H. J. Res. 355, the Mexican farm labor bill, in view of recent resumption of negotiations with Mexico. Rep. McCormack concurred in this view. (pp. 2709-10.)
6. STATISTICS. The Post Office and Civil Service Committee reported without amendment S. 2348, to repeal the provision for the Census Bureau to collect and publish statistics of red-cedar shingles (H. Rept. 1325)(p. 2714).
7. FOREIGN AID. Both Houses received from the President a report on the mutual security program for the last half of 1953 (H. Doc. 337)(pp. 2618, 2674).

SENATE

8. FORESTRY. Passed as reported S. 2548, to facilitate the administration of certain grazing lands (pp. 2655-63).

As reported and passed, the bill provides as follows:

Section 1 makes the bill applicable to national forest lands and lands administered under title III of the Bankhead-Jones Farm Tenant Act, except those administered by Interior, and makes it applicable to lands in all States rather than the 14 States named in the original version.

Sec. 2 provides for encouraging range improvements by grazing permittees by assuring the permittee that he will receive the benefits of the increased grazing capacity resulting from improvements made by him, providing for compensating a permittee for loss of a range improvement caused by the Federal Government, providing for payment by a subsequent permittee to his predecessor of the value of improvements constructed by such predecessor, and providing for amortizing the value of any range improvement over its normal life.

Sec. 3 provides for regulations governing transfers of grazing privileges, so that grazing cuts cannot be based solely on the fact that a permit is being transferred.

Sec. 4 provides for maintenance of base property standards (land, water, and improvements required to qualify for a grazing permit) consistent with local practices.

Sec. 5 provides for informal appeals, up to the Secretary, from any departmental decision respecting use of lands covered by the bill, provides for appeal to a 3-man board upon request, and makes this provision applicable to all uses of the lands instead of grazing only.

Sec. 6 provides for a formal review de novo, at which a record is made, for anyone dissatisfied with the informal review.

Sec. 7 provides a further appeal to the U. S. district court.

Sec. 8 provides that the review by the district court shall be based upon the record made in the formal review under Sec. 6.

Sec. 9 provides that the formal and court reviews provided by the bill would operate to stay the decision appealed from only if the Secretary or the court should so order.

Sec. 10 makes the review procedures provided by the bill exclusive, preserves the Secretary's discretion to make protection or changed use cuts, and excludes decisions on such cuts from the formal and court review procedures.

Sec. 11 provides for multiple-use advisory councils.

Sec. 12 expresses the policy that all resources and uses of the lands covered by the bill be safeguarded and given full consideration.

The Committee struck out the provision for a comprehensive economic study to determine suitable grazing fees, on the basis that such a study is already authorized. However, the committee report states, "Your committee feels that



407, 429, 453, 459, 480, 571, 641, 650, 702, 729, 737, 741, 742, 758, 1248, and 1260).

### FOOD STANDARDS, NARCOTIC ADDICTS, AND NOMINATIONS

*Committee on Labor and Public Welfare:* Committee, in executive session, took the following actions:

(1) Ordered favorably reported without amendment H. R. 6434, to amend the Food and Drug Act relating to food standards; with an amendment in the nature of a substitute bill, H. R. 6702, to authorize care and treatment by PHS of narcotic addicts committed by U. S. District Court for the D. C.; and miscellaneous nominations in the Public Health Service;

(2) Considered, but postponed further action on until April 1, 1954, H. R. 356, to amend the Railroad Retirement Act of 1937, as amended, so as to eliminate the dual-benefit ban;

(3) Announced that on Wednesday, March 10, the committee would meet in executive session to consider

S. 692, fair employment practices, to be followed by S. 2650, Taft-Hartley Act amendments; and

(4) Announced that on Thursday, March 11, open hearings will be held on the nominations of J. Ernest Wilkins to be Assistant Secretary of Labor, and Frank C. Squires to be a member of the Railroad Retirement Board, following which an executive session will be held to consider these nominations and S. 2650, Taft-Hartley Act amendments.

### FEDERAL EMPLOYEES' SECURITY

*Committee on Post Office and Civil Service:* Committee announced that at 10 a. m. on Wednesday, March 10, it will continue hearings on the subject of dismissal from Government service of employees for security reasons, with further testimony from Philip Young, Chairman, Civil Service Commission. Following these hearings, the committee will hold an executive session to consider postmaster nominations.

## House of Representatives

### Chamber Action

**Bills Introduced:** 14 public bills, H. R. 8267-8280; 7 private bills, H. R. 8281-8287; and 2 resolutions, H. J. Res. 463 and 464, were introduced. Pages 2714-2715

**Bills Reported:** Reports were filed as follows:

Two private bills, H. R. 6563 and H. J. Res. 455 (H. Repts. 1321 and 1322, respectively);

H. R. 8193, to amend the Refugee Relief Act of 1953 (H. Rept. 1323);

Ninth Intermediate Report of the Committee on Government Operations Relating to Investigation of Racketeering in the Detroit Area (H. Rept. 1324); and

S. 2348, to repeal the act authorizing the Director of the Census to collect and publish statistics of red-cedar shingles. Page 2714

**Highway Aid:** Passed, by a voice vote, H. R. 8127, to amend and supplement the Federal-Aid Road Act to authorize appropriations for continuing the construction of highways:

This bill authorizes an appropriation of \$600 million for fiscal year 1956 and a like sum for 1957; to be allocated as follows:

\$270 million for projects on the Federal-aid primary highway system;

\$180 million for projects on the Federal-aid secondary highway system; and

\$150 million for projects on Federal-aid primary highway system in urban areas, and for projects on approved extensions of the Federal-aid secondary system within urban areas.

Rejected amendments that sought to—

Increase the authorization from \$600 million to \$700 million and to alter the formula for its allocation;

Change the formula for apportioning the funds to States in regard to area and population (two amendments);

Delete language making grants to States dependent on the existence of a 2-cent-per-gallon Federal excise tax on gasoline.

Delete provision authorizing a study relative to problems posed by necessary relocation and reconstruction of public utilities.

H. Res. 460, the rule for the consideration for H. R. 8127, was adopted earlier. Pages 2675-2707

**Program for Tuesday:** Adjourned at 5:23 p. m. until Tuesday, March 9, at 11 a. m., when the House will consider H. R. 8149, to amend the hospital survey and construction provisions of the Public Health Service Act to provide matching grants by the Federal Government to State programs for the construction of certain facilities.

### Committee Meetings

#### FARM MORTGAGES—DAIRY PROGRAM

*Committee on Agriculture:* Ordered reported to the House H. R. 6711, to authorize Federal land banks to make a bulk purchase of remaining assets of the Federal Farm Mortgage Corporation, except cash, accounts receivable, and reserved mineral interests.



Also received the report of the Andresen Special Subcommittee on Dairy Legislation. (For attending statement of Chairman Andresen, see Digest of March 2, p. D218.)

#### WARRANT OFFICERS

*Committee on Armed Services:* Subcommittee No. 2 resumed its consideration of H. R. 6374, to provide a statutory plan for warrant officers of the Armed Forces similar to that provided for commissioned officers. Testimony in connection with this proposal was furnished for the fourth consecutive day by representatives of the Army, Navy, Air Force, and Marine Corps. Recessed until Thursday morning.

#### ACQUISITIONS AND DISPOSALS

*Committee on Armed Services:* The Cunningham subcommittee considered four projects today, relating to Air Force Heavy Press Program, all of which involved the leasing of Government-owned facilities to various private operators for defense production. The projects were as follows:

No. 175, aluminum forging and extrusion facility at Adrian, Mich.;

No. 176, a heavy press aluminum extrusion facility at Halethorpe, Md.;

No. 177, a heavy press steel extrusion facility at Buffalo, N. Y.; and

No. 178, a heavy press aluminum forging extrusion facility at Cleveland, Ohio.

Witnesses testifying on the program were Gen. Kern Metzger, Air Materiel Command, Air Force, and Max Golden, Office of the Secretary of the Air Force.

#### HOUSING

*Committee on Banking and Currency:* John M. Ferry, Special Assistant for Installations (Air Force), represented the Department of Defense at today's hearing on H. R. 7839, to aid in the provision and improvement of housing, the elimination and prevention of slums, and the conservation and development of urban property. Mr. Ferry, who was accompanied by Col. Hal McCord, Chief, Family Group (Air Force), stated that the Defense Department is doing its best to provide servicemen with housing where he will not be subject to rentals and his ability to pay, nor be subject to substandard living. Boris Shiskin, secretary of the housing committee (AFL), urged a broadening of the proposed bill in line with the AFL's recommendations, which, he stated, would raise the level of housing construction, provide good homes for American families, and help sustain the economic prosperity. Representatives of the CIO, Ben Fischer, housing director, and John Edelman, discussed CIO suggestions for a need of a larger housing program in the postwar period, and recommended miscellaneous revisions to the proposal. Edward D. Hollander, national director, Americans for Democratic

Action, stated that there was nothing contained in the bill that would help solve the particular problem of minority housing, and recommended changes regarding more liberal Federal financing, and cooperative housing for middle-income families. In the afternoon session the witnesses were Lewis Whiteman, representing the Associated Builders of Greater New York; and two officials of the National Association of Housing and Redevelopment—Oliver C. Winston, president, and John Searles.

Hearings will be resumed tomorrow morning when testimony will be received from representatives of the U. S. Chamber of Commerce and the American Bankers' Association.

#### TAFT-HARTLEY LAW

*Committee on Education and Labor:* Voted, 18 to 6, to defeat a proposal to repeal the union-shop provisions of the Taft-Hartley Act and the Railway Labor Act. The motion was offered by Representative Smith of Kansas (author of H. R. 3999), which he proposed as an amendment to the Labor-Management Relations Act today. Recessed until tomorrow morning.

#### COLORADO RIVER AND FRYINGPAN (ARK.) PROJECTS

*Committee on Interior and Insular Affairs:* Subcommittee on Irrigation and Reclamation considered, but took no action on, H. R. 236, to authorize the construction of the Fryingpan-Arkansas project in Colorado; and H. R. 4443; 4449, and 4463, bills to authorize the Secretary of the Interior to construct, maintain, and operate the Colorado River storage project and participating projects. Witnesses heard on the Colorado River project were E. O. Larson, regional director, and C. B. Jacobson, engineer, both of the Bureau of Reclamation, Salt Lake City, Utah. Recessed on these bills until tomorrow morning.

#### PESTICIDES

*Committee on Interstate and Foreign Commerce:* Ordered reported to the House with amendments H. R. 7125, which would prohibit the use of pesticide chemicals as additives to raw agricultural commodities, unless the quantity does not exceed the limits of tolerance as established by the Secretary of Health, Education, and Welfare; or is exempted from the requirement of tolerance by the Secretary. It also provides regulations for classifications of pesticide chemicals according to the degree of tolerance, etc. Representative Miller of Nebraska, author of the bill, explained its purposes. Other witnesses to testify were Lea S. Hitchner, of the National Agricultural Chemicals Association, who was accompanied by George Burroughs, counsel; H. Thomas Austern, general counsel, National Canners Association; and Charles W. Crawford, Commissioner, Food and Drug Administration.







AMENDING THE FEDERAL FOOD, DRUG, AND COSMETIC ACT  
WITH RESPECT TO RESIDUES OF PESTICIDE CHEMICALS IN OR  
ON RAW AGRICULTURAL COMMODITIES

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MARCH 23, 1954.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. SPRINGER, from the Committee on Interstate and Foreign  
Commerce, submitted the following

## REPORT

[To accompany H. R. 7125]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 7125) to amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 4, line 10, strike out "(1)" and insert "(l)".

Page 5, line 8, after "from", insert "the requirement of".

Page 6, line 7, strike out "(1)" and insert "(l)".

Page 6, line 9, after "Secretary", insert "of Health, Education, and Welfare".

Page 6, line 20, strike out "event" and insert "events".

Page 6, line 25, strike out "(1)" and insert "(l)".

Page 7, line 2, after "or", insert "in the event"; and, in lines 3 and 4, after "Secretary", insert "of Health, Education, and Welfare".

Page 10, line 1, strike out "person," and insert "person".

Page 11, line 3, strike out "or" and insert "of".

Page 12, line 20, strike out "(1)" and insert "(l)".

Page 13, line 17, strike out "(1)" and insert "(l)".

All of the foregoing amendments are either clerical or for the purpose of making minor clarifications.

### PURPOSE

The primary purpose of the bill is to assure greater protection of the public health by improving, simplifying, and speeding up the

method for regulating, under the provisions of the Federal Food, Drug, and Cosmetic Act, the amount of residue which may remain on raw agricultural commodities after use of pesticide chemicals. Pesticide chemicals are substances such as insecticides, fungicides, and weedkillers used in the production, storage, and transportation of food for the purpose of controlling insects, plant diseases, weeds, and other pests. This bill is an exercise of the power of Congress over the regulation of interstate commerce in adulterated food.

This bill would accomplish its purpose primarily by adding to the Federal Food, Drug, and Cosmetic Act an improved procedure for establishment of tolerances for pesticide chemicals remaining in or on raw agricultural commodities. Poisonous or deleterious substances intentionally added to, or which remain in, other food are subject to existing law and would not be affected by this bill.

A primary objective in drafting the bill was to develop legislation that would provide for prompt administrative action to permit effective use of pesticide chemicals without hazard to the public health; legislation that would be safe for consumers and practical for producers.

The committee knows of no opposition to the bill. All interested parties are agreed as to the need for the bill.

#### *Existing law*

Under existing law, added poisonous and deleterious substances—and most pesticide chemicals fall in this class—must be kept out of foods unless they are required in production or cannot be avoided by good manufacturing practice. When such a substance is required in production—as many pesticide chemicals are required in growing agricultural crops—a tolerance may be established by the Secretary of Health, Education, and Welfare, but only after a formal public hearing. (The maximum amount of residue that may lawfully remain in or on the food is commonly referred to as a tolerance.) Detailed findings of fact and conclusions must be made by the Secretary as to the required use of the pesticide and the residue levels that may safely be tolerated.

#### *Need for new legislation*

Regulations limiting the amount of pesticidal residue which may remain in or on food have been issued under the present law in only one instance, although the law authorizing such regulations has been in effect for over 15 years. During all that time control has been exercised through unofficial and informal tolerances. In 1950, lengthy public hearings were held for the purpose of establishing official tolerances (the maximum amount of poisonous or deleterious residue which may legally remain in or on food) for fresh fruits and vegetables. These hearings, at a cost of nearly a half-million dollars to Government, to industry, to agricultural organizations, and to the various land-grant colleges, produced a very large volume of evidence that had not theretofore been gathered together, but the record is still under consideration by the Government and the necessary tolerances have not yet been issued. This has been responsible for uncertainty under the law. It has handicapped the Government in enforcing the law, the grower in complying with the law, and the pesticide manufacturer and Federal and State agencies in discharging their responsibility for advising and making recommendations to the grower with



respect to the use of pesticide chemicals. This, together with the introduction of a large number of new pesticide chemicals, some of which are known to be toxic, has been responsible for concern that existing law is inadequate to protect the public health.

It has been generally recognized that a primary reason why tolerances have not been established to control agricultural usage of pesticide chemicals as intended by Congress has been the cumbersome, time-consuming, and impracticable procedure prescribed by existing law.

#### SUMMARY OF THIS BILL

Under this bill, a regulation establishing a tolerance for a pesticide chemical used on raw agricultural commodities may be initiated by an applicant for registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act or by the Secretary of Health, Education, and Welfare. It is anticipated that, in the usual case, registration of a new economic poison would be withheld by the Department of Agriculture pending the issuance of the tolerance.

The tolerance-setting process for a particular pesticide chemical started by a person other than the Secretary is accomplished by (a) filing with the Secretary of Agriculture a request to certify to the Secretary of Health, Education, and Welfare that the pesticide chemical is useful for its intended purpose and that the requested tolerance reflects the amount of residue, if any, likely to result when the pesticide is used as proposed; and (b) filing of a petition proposing the tolerance, together with supporting scientific data to establish safe residue levels, with the Secretary of Health, Education, and Welfare. Within 90 days after the Secretary of Agriculture has certified to usefulness, the Secretary of Health, Education, and Welfare would make public a regulation establishing the tolerance.

The basic authority, under the bill, to establish tolerances or exemptions from tolerances directs the Secretary of Health, Education, and Welfare to limit in or on raw agricultural commodities residues of poisonous or deleterious pesticide chemicals and pesticide chemicals of unknown or uncertain toxicity "to the extent necessary to protect the public health." In doing so, the Secretary is directed to take into account the necessity for the production of an adequate, wholesome, and economical food supply and the Secretary of Agriculture's opinion as to the amount of residue that will remain, as well as the overall effect the pesticide chemical may have in consumers' diets.

The Secretary is authorized to fix the tolerance at zero—and thus prohibit any residue—when the scientific data submitted does not justify a greater tolerance.

Provision is made for the referral of a petition proposing a tolerance or exemption to an ad hoc advisory committee of scientific experts selected by the National Academy of Sciences for a report and recommendation where this is requested by the proponent of the tolerance or is otherwise deemed necessary by the Secretary of Health, Education, and Welfare. Such referral extends the time limits otherwise prescribed for administrative action. The report and recommendation of any such advisory committee is considered by the Secretary before a tolerance is established and may be made a part of the official record in the event of a public hearing, in accordance with the provisions of the Administrative Procedure Act.

Provision is also made, among other things, for the establishment of tolerance regulations by the Secretary of Health, Education, and Welfare, upon his own initiative, for the exemption of certain pesticide chemicals from the need for tolerances, and for the issuance of temporary tolerances. These are described in more detail in following parts of this report.

#### HISTORY OF THIS BILL

In 1938, when Congress first made specific provision for the regulation of pesticide residues on food, conditions were considerably different than they are today. At that time there were only a few pesticide chemicals on the market in strong contrast to the large number marketed today. The development and introduction of many new pesticide chemicals during the postwar years for use in the production, storage, and transportation of food has been one of the noteworthy contributions of industry research in the last decade. These chemicals have become vital tools in the production of an adequate, wholesome, and economical food supply, and it is accepted that without them the health and living standards of this Nation and of other countries dependent upon our food exports would be dangerously impaired. At the same time, the large number of these chemicals and the frequent introduction of new ones has focused attention upon the need, both from the standpoint of public health and agricultural use, for a more prompt and balanced form of control than is possible under a law geared to 1938 conditions.

The enactment in 1947 of the Federal Insecticide, Fungicide, and Rodenticide Act as a direct control over the marketing of pesticide chemicals with regard to their safety and effectiveness has brought about a general recognition that a better degree of coordination between this law and the provisions of the Federal Food, Drug, and Cosmetic Act pertaining to pesticidal residues on food would be beneficial.

In addition to these developments since 1938, a report by the Select Committee to Investigate the Use of Chemicals in Foods on the question of the use of chemicals in food has indicated the need for supplemental legislation in this field (H. Rept. No. 2356, 82d Cong., 2d sess.).

It was against this background that H. R. 4277 was introduced on March 26, 1953. That bill was similar in purpose and design to the bill here reported to the House, H. R. 7125.

A special subcommittee of this committee held a hearing on H. R. 4277 on July 14, 1953. At that hearing numerous witnesses testified in support of the bill and urged its early passage. There were objections raised, however, by the Department of Health, Education, and Welfare, the Department of Commerce, the Department of Agriculture, and by the Judicial Conference of the United States.

Following the hearing on H. R. 4277, the author of the bill, Government officials, farm organizations, and industry groups participated in a series of conferences for the purpose of working out the features of the bill deemed objectionable. These conferences were extremely fruitful, with the result that the important issues in dispute were largely resolved to the satisfaction of all interested groups and a clean bill was introduced in the present session, H. R. 7125.

This committee held a hearing on H. R. 7125 on March 8, 1954. The testimony of the witnesses at this hearing and letters and state-



ments filed by various interested persons and groups with this committee show a remarkable unanimity of support for this bill. There appears to be no opposition to the bill.

#### IMPROVEMENTS OVER EXISTING LAW

The principal respects in which this bill would change and improve existing law are—

1. A specific method for controlling the residue of pesticide chemicals which may remain in or on raw agricultural commodities is set up which is distinct from that controlling other poisonous or deleterious substances which are used in, or remain in, processed, fabricated, and manufactured food. In this way, recognition is given to the peculiar economic, agricultural, and public health problems which are important in the regulation of pesticide chemicals and to the statutory controls which now apply to these chemicals. Unlike many other chemicals, pesticide chemicals are necessary instruments of agriculture in producing and expanding our food supply and are comprehensively regulated by the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act.

2. The determination of questions of agricultural usefulness and probable residue levels involved in the establishment of tolerances, is made a function of the Department of Agriculture; while the determination of questions of a public health nature remains a function of the Department of Health, Education, and Welfare. In this way, a more logical grouping of governmental functions is effected than under existing law which casts the responsibility for determining agricultural questions as well as public health questions upon the Department of Health, Education, and Welfare.

3. Before any pesticide-chemical residue may remain in or on a raw agricultural commodity, scientific data must be presented to show that the pesticide-chemical residue is safe from the standpoint of the food consumer. The burden is on the person proposing the tolerance or exemption to establish the safety of such pesticide-chemical residue.

4. Specific time limits for informal administrative action in establishing tolerances are prescribed to avoid the adverse consequences of inaction and protracted delay. Promptness is vital in this area of regulation to all concerned.

5. Provision is made for the appointment of independent committees of scientific experts selected by the National Academy of Sciences to study proposed regulations establishing tolerances for pesticide chemicals and to make recommendations thereon to the Department of Health, Education, and Welfare. This provision, enabling the participation of disinterested experts in dealing with the highly technical and complex problems which attend this area of regulation, is one of the most important features of the bill.

6. The procedure prescribed for establishing tolerances emphasizes informal proceedings rather than the formal public hearing type of proceedings. This is accomplished in two ways: First, the bill sets up a procedure whereby the manufacturer or formulator most directly concerned with the establishment of a tolerance for a particular pesticide chemical has the right to initiate the proceedings for a tolerance on that chemical by filing a petition. Second, the bill provides for the initial setting of tolerances without a formal public



hearing, limiting such hearings to issues which may remain in dispute at the conclusion of the informal proceedings. Existing law requires a formal public hearing before any tolerance can be established and such a proceeding can be initiated only upon the request of a substantial segment of the industry or upon the initiative of the Government.

7. Where the informal procedures do not produce a satisfactory tolerance or exemption the rights of all concerned to a full and fair hearing on the disputed issues are preserved.

8. Enforcement of the adulteration provisions relating to raw agricultural commodities bearing pesticide chemicals is simplified and made more effective, since, under the bill, authority to establish tolerances extends to pesticide chemicals not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, as well as pesticide chemicals which are known to be poisonous or deleterious.

9. Provision is made for the exemption of pesticide chemicals from the requirements of a tolerance in cases where tolerances are not necessary to protect the public health and for the establishment of temporary tolerances for those pesticide chemicals which are used in or on raw agricultural commodities under experimental permits issued by the Department of Agriculture. There are no provisions for such exemptions or temporary tolerances in the present law.

#### EXPLANATION OF THE BILL BY SECTIONS

An explanation of the various provisions of the bill is contained in the sectional analysis which follows.

##### *Section 1*

This section contains definitions of the terms "pesticide chemical" and "raw agricultural commodity". These terms are not used in the present law. The term "pesticide chemical" is defined to include any substance which, alone, in chemical combination or in formulation with other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act (7 U. S. C. secs. 135-135h), which is used in the production, storage, or transportation of raw agricultural commodities. The term "raw agricultural commodity" is defined to include any food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

It is intended by these definitions to draw a sharp line of distinction between the subjects covered by this bill and the subjects which are unaffected by it. This bill covers the regulations of the residue from pesticide chemicals which may remain in or on food in its raw or natural state as usually purchased by the consumer or the food processor. Such food would include fresh fruits and vegetables, grains, nuts, eggs, and milk and similar agricultural produce grown or produced at the farm level. It would also include those foods which have been subjected to certain customary postharvest treatment prior to marketing, such as the washing or coloring of fruits in their unpeeled natural form, the stripping of the outer leaves of lettuce, and the preparation of fresh green salads. This bill does not attempt to regulate the residue from pesticide chemicals which may remain in or on processed, fabricated, or manufactured food other than by

limiting the permissible residues on raw agricultural commodities. Food processed by operations such as cooking, freezing, dehydration, or milling would remain subject to section 406 rather than being regulated by this bill. For example, the provisions of this bill would apply to the residue of DDT remaining in or on fresh apples or apples which are washed or waxed for market. The provisions of this bill would not apply to any residue of DDT remaining in or on apple-juice or applesauce which may be prepared or produced from such apples.

The term "pesticide chemical" has been selected in order to make it clear that tolerances (or exemptions) under this bill are to be established with reference to the poisonous, deleterious, or inadequately tested ingredients of a formulated "economic poison" rather than with reference to the formulated or finished product itself. For example, in a finished product containing DDT a tolerance under this bill would be established for DDT rather than for the finished product itself.

### *Section 2*

The Federal Food, Drug, and Cosmetic Act (in sec. 301 (a)) prohibits the shipment in interstate commerce of adulterated food.

Under section 402 (a) (2), a food is deemed to be adulterated if it bears or contains any "added" poisonous or deleterious substance which is "unsafe" within the meaning of section 406 of the act. Section 406 contains a general declaration that any poisonous or deleterious substance added to food is unsafe except where the substance is "required in the production thereof and cannot be avoided by good manufacturing practice." However, in any case where such a substance is so required or cannot be so avoided (and this is so in case of the use of pesticide chemicals in the production of most raw agricultural commodities), section 406 directs the Secretary of Health, Education, and Welfare to promulgate regulations limiting the quantity on the food to such extent as such Secretary finds to be necessary for protection of the public health.

As explained elsewhere in this report, the primary purpose of this legislation is to provide a new method, and new procedures, for regulating the amount of pesticide chemical residue which shall be permitted to remain in or on raw agricultural commodities.

To attain this objective, section 2 of the bill amends section 402 (a) (2) so as to provide, in the case of any raw agricultural commodity bearing or containing a pesticide chemical, that such commodity shall be deemed to be adulterated if such pesticide chemical is unsafe within the meaning of the new section 408 (a) which is being added to the law by section 3 of the bill. Thus, section 406 of the law will no longer be applicable in the case of raw agricultural commodities bearing or containing pesticide chemicals.

### *Section 3*

This section amends chapter IV of the present law by adding a new section 408. This section would supplant section 406 insofar as the residues of pesticide chemicals remaining in or on raw agricultural commodities are concerned.

*Section 408 (a).*—This subsection specifies the conditions under which a pesticide chemical is deemed unsafe within the meaning of the adulteration provision in section 402 (a) (2). Under this subsection,



the residue of a poisonous or deleterious pesticide chemical or a pesticide chemical which is not generally recognized as safe is deemed unsafe if no tolerance or exemption has been established for it, or, in the event that a tolerance has been established, if the quantity of the residue exceeds the tolerance.

*Section 408 (b).*—This subsection gives to the Secretary of Health, Education, and Welfare the authority to establish tolerances. The subsection also sets forth the principal factors which should guide the administrative judgment in taking such action. The factors are designed to assure a proper balance between the need for protecting the consumer and the need for assuring an adequate, wholesome, and economical food supply. The Secretary is authorized to establish the tolerance at zero level in cases where a higher tolerance is not justified by the scientific data.

*Section 408 (c).*—This subsection authorizes the establishment of regulations exempting pesticide chemicals from the requirements of a tolerance where a quantitative restriction on the residue of such a chemical is not necessary.

*Section 408 (d).*—This subsection prescribes the procedure for establishing tolerances or exemptions pursuant to a petition.

Paragraph (1) of this subsection sets forth who may file a petition, initiating the regulatory process and the type of data which is to be contained in the petition.

A petition may be filed only by a person who has registered or who has submitted an application for registration under the Federal Insecticide, Fungicide, and Rodenticide Act for an economic poison containing the pesticide chemical for which the tolerance or exemption is sought. It is intended by this provision to limit the class of persons who may file a petition to those who are in the best position to develop and present the type of scientific data which are necessary for the exercise of sound administrative judgment.

The data to be contained in a petition include information about the pesticide chemical, how it is to be used, full reports of investigations made with respect to the safety of the pesticide chemical, the results of tests on the amount of residue remaining, including a description of the analytical methods used, practicable methods for removing the residue which exceeds any proposed tolerance, together with a proposed tolerance and reasonable grounds to support the petition.

It is intended that a rule of reason should dictate the nature and extent of the information which should be submitted with a petition. What is contemplated is data adequate to permit an accurate appraisal of safety to protect the public health. In this respect the data as to a particular chemical will depend upon many variable factors, including its physical and chemical properties, recommended purpose, toxicity, and rate of disappearance. The emphasis to be placed on any such factor will similarly depend on the particular pesticide chemical under consideration and its proposed usage. In some cases it is to be expected that, despite extensive research, completely satisfactory analytical methods or methods of residue removal may not be available. Where satisfactory chemical methods have not been developed, reliable bioassay methods or other reliable methods may be used in lieu of, or in combination with, chemical methods to identify and measure the residue. It is understood that data as to practicable



methods for removing residue are required only in cases where the residue would otherwise exceed the proposed tolerance.

Paragraphs (2), (3), and (4) set forth the informal procedure to be followed by the Secretary of Health, Education, and Welfare in establishing tolerances or exemptions in cases where a petition is filed. This procedure contemplates an informal rulemaking process after the filing of a petition to enable prompt administrative action, to obviate unnecessary public hearings, and to minimize the issues where hearings are necessary.

Paragraph (2) provides that the Secretary shall establish a tolerance or exemption for a pesticide chemical for which a petition for a tolerance or exemption is filed within 90 days after the Secretary of Agriculture has certified that the pesticide chemical is useful pursuant to subsection (1). Paragraph (3) provides for a variation in this procedure when the petition is referred to an advisory committee.

Paragraph (3) sets forth the procedure for referring a petition to an advisory committee. Under this, the petitioner may within 90 days after filing a petition request reference to an advisory committee or the Secretary may cause such referral upon his own initiative. If such a request or referral is made, the advisory committee is selected and appointed in accordance with subsection (g). The advisory committee, after a study of the petition and all other data before it, would certify a report and recommendations, together with all underlying data and a statement of the reasons or basis for the recommendation, to the Secretary within 60 days after the referral (or within 90 days if extended for good cause). The Secretary would then establish the tolerance or exemption after having taken into consideration the report and recommendations of the advisory committee.

Paragraph (4) provides that regulations establishing such tolerances or exemptions become effective upon publication in the Federal Register.

Paragraph (5) sets forth the procedure for obtaining and holding public hearings on tolerances or exemption regulations which are initially promulgated upon the basis of the informal process contemplated under paragraphs (2) and (3). This paragraph provides for a formal rulemaking hearing but only on those parts of tolerance or exemption regulations to which objection is made. Any "adversely affected" person is given the opportunity to file objections and request a public hearing. This would include such persons as the person filing the petition, a food processor or food manufacturer, or a grower using the pesticide chemical. The person filing the petition is authorized to reply to the objections, whereupon the hearing is held. Specific provision is made whereby the report of an advisory committee may be introduced into evidence at such hearing subject to section 7 (c) of the Administrative Procedure Act. In the event that cross-examination of such report is necessary for full and true disclosure of the facts under section 7 (c), provision is made for a member of the advisory committee to attend and testify at the hearing with respect to the report and underlying data. This should not be construed to deny the right of any member of an advisory committee to so attend or testify with regard to the majority report of the committee or to a minority report if there is one. Section 7 (c) also would authorize evidence in rebuttal of the report. Regulations resulting from such hearing, which are to be issued as soon as practicable after the hearing,

must be based upon detailed findings and substantial evidence of record.

*Section 408 (e).*—This subsection prescribes a procedure whereby the Secretary of Health, Education, and Welfare may propose a tolerance or exemption regulation upon his own initiative or upon the request of an interested person. It is anticipated that in the case of new pesticides, tolerance or exemption regulations will be initiated by petition under subsection (d) rather than under the provisions of this subsection.

*Section 408 (f).*—This subsection provides that data submitted to the Secretary and to advisory committees in support of a petition are deemed confidential until publication of a regulation based thereon under (2) or (3) of subsection (d). This provision is designed to assure equitable protection to research information until the time when regulations are published for public comment and possible formal hearings.

*Section 408 (g).*—This subsection specifies the manner in which the ad hoc advisory committees are selected and appointed and the qualifications of members serving on such committees. This is one of the key provisions of the bill which enables a study of proposed tolerances or exemptions by impartial scientific experts of diversified professional backgrounds who will be able to bring to bear on the administrative process the results of particular experience and expertise in the field. The recommendations of these groups will obviously be most carefully considered and will constitute an important part of the scientific evidence. Under this bill, advisory committees will be appointed by the Secretary of Health, Education, and Welfare and the members thereof will be selected by the National Academy of Sciences. In making the selection, the Academy will be guided by the qualification standards specified in the bill which emphasize the need for experts of diversified experience and background, including experts drawn from the agricultural field. It is intended that the Academy will select the land-grant college representative or representatives on the basis of recommendations made by the Association of Land-Grant Colleges and Universities. Provision is made whereby the Secretary of Health, Education, and Welfare may prescribe general rules pertaining to the operations of advisory committees. It is not intended that such rules should impair the basic flexibility and independence of action which will be necessary to the proper functioning of the advisory committees under this bill.

*Section 408 (h).*—This subsection is designed to make it clear that the proponent of a tolerance or exemption regulation or his representative and the Secretary of Health, Education, and Welfare have the unqualified right to consult with an advisory committee.

*Section 408 (i).*—This subsection provides for judicial review in the United States courts of appeals of orders of the Secretary of Health, Education, and Welfare establishing tolerance or exemption regulations and of orders of the Secretary of Agriculture with respect to certifications of usefulness. Review is available in any case of "actual controversy" to any person who will be adversely affected by tolerance or exemption regulations or by a certification as to agricultural usefulness. The bill does not restrict review to participants in the administrative hearing. The nature of judicial review provided is the same as that provided for in section 10 of the Administrative Procedure Act



as interpreted in *Universal Camera Corp. v. National Labor Relations Board* (340 U. S. 474) and applied with respect to section 701 (f) of the present Federal Food, Drug, and Cosmetic Act. Specific provision is made for consideration by the courts of any report and recommendation of an advisory committee properly presented at the public hearing.

*Section 408 (j).*—This subsection provides for the establishment of temporary tolerances for pesticide chemicals used on experimental permits in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act.

*Section 408 (k).*—This subsection saves the effectiveness of tolerance regulations which may be promulgated under the authority of section 406 (a) upon the basis of public hearings initiated before January 1, 1953 (this embraces at the present time only those initiated in 1950 for fresh fruits and vegetables). These regulations would be subject to amendment and repeal under the provisions of this bill.

*Section 408 (l).*—This subsection sets forth the functions of the Secretary of Agriculture under the bill. Under the present law the Secretary of Agriculture has no responsibility in the setting of tolerances by the Secretary of Health, Education, and Welfare. Agricultural usage and the necessity for using pesticide chemicals in agriculture as well as questions of safety are determined by the Secretary of Health, Education, and Welfare under the present law. This bill imposes upon the Secretary of Agriculture the function of (a) determining the usefulness of a pesticide chemical in agriculture, and (b) stating an opinion whether a proposed tolerance or exemption reasonably reflects the residue which is likely to result when the pesticide chemical is used as proposed. In this respect, generally recognized and accepted good agricultural practices which normally eliminate or minimize residue may be taken into account in establishing tolerances. The bill delegates to the Secretary of Health, Education, and Welfare the function of determining safe residue limits from the standpoint of the food consumer.

Under this procedure, a person who is qualified to file a petition for a tolerance or exemption may request the Secretary of Agriculture to make, for example, a certification to the Secretary of Health, Education, and Welfare that the pesticide chemical named in the petition is useful in controlling insects or other pests which affect specified raw agricultural commodities for which the tolerance or exemption is sought. After study of the data before him, the Secretary of Agriculture may make the certification as proposed or give the person requesting the certification the opportunity for a formal hearing based on a record and stated findings. Tolerances or exemptions would not be established by the Secretary of Health, Education, and Welfare until after a certification of usefulness was made. Each certification of usefulness must be accompanied by an opinion by the Secretary of Agriculture whether the proposed tolerance reasonably reflects the amount of residue which may be expected when used as proposed. The Secretary of Agriculture is also given the exclusive authority under the bill to promulgate regulations implementing the provisions of this subsection.

Since tolerances may be set and exemptions made under the bill only in the case of those pesticide chemicals which the Secretary of Agriculture certifies as "useful," the meaning of this term is important. On March 10, 1954, the Under Secretary of Agriculture, in writing to



the chairman of this committee, attached a statement of views regarding the meaning of the term "useful" as it is employed in section 48 (1) of the bill. He stated that it represents the views of representatives of the industry and the Department of Agriculture. This statement is set forth below. The committee has not been informed of any disagreement with the views therein expressed.

Another important interpretative question which is presented is the legislative meaning of the term "useful" as it is employed in the bill. This term is an important one since tolerances are set and exemptions are made only on those pesticides which the Secretary of Agriculture certifies to be "useful for the purpose for which a tolerance or exemption is sought."

Usefulness of a pesticide chemical for the purpose of certification under H. R. 7125 should be determined upon the basis of its practical biological or pesticidal effectiveness. Pesticidal effectiveness may be established in terms of percentage reduction or control of pests or, when appropriate, increase in yield or quality of crop or other economic gain or practical benefit following application of the specified pesticide under the conditions prescribed, compared with results from adequate controls. In determining practical effectiveness, consideration may be given to other economic gain or practical benefit including: economy or ease of production, harvest, or storage of the crop; flexibility as regards time of planting or harvest, even at the possible sacrifice of yield; and general benefit to livestock, plants, or human welfare not necessarily related to yield.

One of the purposes of this bill is to expedite the setting of tolerances with a minimum of delay and without undue burden upon the administrative agencies involved. To minimize the need for repeated certifications and setting of tolerances for specific uses of a pesticide chemical as they are established, certification should be on as broad a basis as the data submitted to the Secretary of Agriculture warrant. Thus, when the petitioner submits data showing that a pesticide chemical is effective against one or more pests common to fresh fruits, if the petitioner so requests, the chemical should be certified as useful on fresh fruits for the purpose of establishing a tolerance thereon even though it has not been tested on all fresh fruits, providing the data reasonably indicate that it will be effective on a wide variety of fresh fruits.

Factors other than pesticidal effectiveness are considered in the granting of registration under the Federal Insecticide, Fungicide, and Rodenticide Act of 1947. Many of these factors have no relation to the subject matter of this bill which is concerned with the protection of the public health and the setting of tolerances. It is not intended that the criteria for registration be applied to the certification of usefulness. Such certification should be made by the Secretary of Agriculture upon the establishment of pesticidal effectiveness unless available information indicates that the pesticide chemical is unacceptable for registration as regards the proposed food use.

It is to be noted that the functions of the Secretary of Agriculture under this bill are in addition to those prescribed for the administration and enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act, which is a premarketing control over economic poisons containing pesticide chemicals. Nothing in this bill is intended to change or modify in any way that act and the interpretations thereunder.

*Section 408 (m).*—This subsection makes provision for the establishment of implementing rules and regulations prescribing the manner in which tolerance and exemption rules may be amended or repealed. The bill contemplates that such regulations will be made in the manner prescribed in section 4 of the Administrative Procedure Act. It is intended that public hearings should be held on important regulations and that a minimum of 60 days should be allowed for the submission of views by interested persons before the adoption of a proposed regulation as final.

*Section 408 (n).*—This subsection is designed to make it clear that section 303 (c) of the present law relating to guaranties is applicable

to this bill. It is not intended to change or modify in any way the guaranty provisions of the present law.

#### *Section 4*

This section contains the usual authorizations for appropriations for the administration of the bill.

#### *Section 5*

This section specifies the time when the provisions of this bill become effective. It provides for the effectiveness upon enactment of all provisions of this bill except section 2. Section 2 would not become effective as to any pesticide chemical for which a tolerance or exemption were not established under section 3 for a period ranging from a minimum of 1 year to a maximum of 2 years after enactment of this bill. This period is for the purpose of providing sufficient time for the new procedure prescribed in section 3 for establishing tolerances to function as to all affected pesticide chemicals.

### CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## FEDERAL FOOD, DRUG, AND COSMETIC ACT

### CHAPTER I—SHORT TITLE

SECTION 1. This Act may be cited as the Federal Food, Drug, and Cosmetic Act.

### CHAPTER II—DEFINITIONS

SEC. 201. For the purposes of this Act—

(a) The term "Territory" means any Territory or possession of the United States, including the District of Columbia and excluding the Canal Zone.

(b) The term "interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body.

(c) The term "Department" means the U. S. Department of Health, Education, and Welfare.

(d) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(e) The term "person" includes individual, partnership, corporation, and association.

(f) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(g) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(h) The term "device" (except when used in paragraph (n) of this section and in sections 301 (i), 403 (f), 502 (e), and 602 (c)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.



(i) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

(j) The term "official compendium" means the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(k) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(l) The term "immediate container" does not include package liners.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(n) If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual.

(o) The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(p) The term "new drug" means—

(1) Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this Act it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or

(2) Any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U. S. C., secs. 135-135k) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(r) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

\* \* \* \* \*

## CHAPTER IV—FOOD

### DEFINITIONS AND STANDARDS FOR FOOD

SEC. 401. Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container: *Provided*, That no definition and standard of identity and no standard of quality shall be established for fresh or dried fruits, fresh or dried vegetables, or butter, except that definitions and standards of identity may be established for avacados,



cantaloupes, citrus fruits, and melons. In prescribing any standard of fill of container, the Secretary shall give due consideration to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. Any definition and standard of identity prescribed by the Secretary for avacados, cantaloupes, citrus fruits, or melons shall relate only to maturity and to the effects of freezing.

#### ADULTERATED FOOD

SEC. 402. A food shall be deemed to be adulterated—

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance, *except a pesticide chemical in or on a raw agricultural commodity*, which is unsafe within the meaning of section 406, *or if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a)*; or (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(c) If it bears or contains a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 406: *Provided*, That this paragraph shall not apply to citrus fruit bearing or containing a coal-tar color if application for listing of such color has been made under this Act and such application has not been acted on by the Secretary, if such color was commonly used prior to the enactment of this Act for the purpose of coloring citrus fruit.

(d) If it is confectionery, and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 per centum, natural gum, and pectin: *Provided*, That this paragraph shall not apply to any confectionery by reason of its containing less than one-half of 1 per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(e) If it is oleomargarine or margarine or butter and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or such oleomargarine or margarine or butter is otherwise unfit for food.

#### MISBRANDED FOOD

SEC. 403. A food shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations

shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

(f) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 401, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as—

(1) a food for which a standard of quality has been prescribed by regulations as provided by section 401, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 401, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Secretary. The provisions of this paragraph and paragraphs (g) and (i) with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream.

#### EMERGENCY PERMIT CONTROL

SEC. 404. (a) Whenever the Secretary finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into interstate commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Secretary as provided by such regulations.

(b) The Secretary is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Secretary shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.



(c) Any officer or employee duly designated by the Secretary shall have access to any factory or establishment, the operator of which holds a permit from the Secretary, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

#### REGULATIONS MAKING EXEMPTIONS

SEC. 405. The Secretary shall promulgate regulations exempting from any labeling requirement of this Act (1) small open containers of fresh fruits and fresh vegetables and (2) food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this Act upon removal from such processing, labeling, or repacking establishment.

#### TOLERANCES FOR POISONOUS INGREDIENTS IN FOOD AND CERTIFICATION OF COAL-TAR COLORS FOR FOOD

SEC. 406. (a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a); but when such substance is so required or cannot be so avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 402 (a). In determining the quantity of such added substance to be tolerated in or on different articles of food the Secretary shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

(b) The Secretary shall promulgate regulations providing for the listing of coal-tar colors which are harmless and suitable for use in food and for the certification of batches of such colors, with or without harmless diluents.

#### COLORLED OLEOMARGARINE

SEC. 407. (a) Colored oleomargarine or colored margarine which is sold in the same State or Territory in which it is produced shall be subject in the same manner and to the same extent to the provisions of this Act as if it had been introduced in interstate commerce.

(b) No person shall sell, or offer for sale, colored oleomargarine or colored margarine unless—

- (1) such oleomargarine or margarine is packaged,
- (2) the net weight of the contents of any package sold in a retail establishment is one pound or less,

(3) there appears on the label of the package (A) the word "oleomargarine" or "margarine" in type or lettering at least as large as any other type or lettering on such label, and (B) a full and accurate statement of all the ingredients contained in such oleomargarine or margarine, and

(4) each part of the contents of the package is contained in a wrapper which bears the word "oleomargarine" or "margarine" in type or lettering not smaller than 20-point type.

The requirements of this subsection shall be in addition to and not in lieu of any of the other requirements of this Act.

(c) No person shall possess in a form ready for serving colored oleomargarine or colored margarine at a public eating place unless a notice that oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve colored oleomargarine or colored margarine at a public eating place, whether or not any charge



is made therefor, unless (1) each separate serving bears or is accompanied by labeling identifying it as oleomargarine or margarine, or (2) each separate serving thereof is triangular in shape.

(d) Colored oleomargarine or colored margarine when served with meals at a public eating place shall at the time of such service be exempt from the labeling requirements of section 403 (except (a) and 403 (f)) if it complies with the requirements of subsection (b) of this section.

(e) For the purpose of this section colored oleomargarine or colored margarine is oleomargarine or margarine having a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, measured in terms of Lovibond tintometer scale or its equivalent.

TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL  
COMMODITIES

SEC. 408. (a) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of clause (2) of section 402 (a) unless—

(1) a tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by the Secretary of Health, Education, and Welfare under this section and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(2) with respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance by the Secretary under this section.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of section 402 (a).

(b) The Secretary shall promulgate regulations establishing tolerances with respect to the use in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals which are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In establishing any such regulation, the Secretary shall give appropriate consideration, among other relevant factors, (1) to the necessity for the production of an adequate, wholesome, and economical food supply; (2) to the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (3) to the opinion of the Secretary of Agriculture as submitted with a certification of usefulness under subsection (l) of this section. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section. In carrying out the provisions of this section relating to the establishment of tolerances, the Secretary may establish the tolerance applicable with respect to the use of any pesticide chemical in or on any raw agricultural commodity at zero level if the scientific data before the Secretary does not justify the establishment of a greater tolerance.

(c) The Secretary shall promulgate regulations exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on any or all raw agricultural commodities when such a tolerance is not necessary to protect the public health. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section.

(d) (1) Any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Secretary of Health, Education, and Welfare, a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of, such economic poison, or exempting the pesticide chemical from a tolerance. The petition shall contain data showing—

(A) the name, chemical identity, and composition of the pesticide chemical;

(B) the amount, frequency, and time of application of the pesticide chemical;

(C) full reports of investigations made with respect to the safety of the pesticide chemical;

(D) the results of tests on the amount of residue remaining, including a description of the analytical methods used;

(E) practicable methods for removing residue which exceeds any proposed tolerance;

(F) proposed tolerances for the pesticide chemical if tolerances are proposed; and

(G) reasonable grounds in support of the petition.

Samples of the pesticide chemical shall be furnished to the Secretary upon request. Notice of the filing of such petition shall be published in general terms by the Secretary within thirty days after filing. Such notice shall include the analytical methods available for the determination of the residue of the pesticide chemical for which a tolerance or exemption is proposed.

(2) Within ninety days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, the Secretary shall, after giving due consideration to the data submitted in the petition or otherwise before him, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful, or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes,

unless within such ninety-day period the person filing the petition requests that the petition be referred to an advisory committee or the Secretary within such period otherwise deems such referral necessary, in either of which event the provisions of paragraph (3) of this subsection shall apply in lieu hercof.

(3) In the event that the person filing the petition requests, within ninety days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, that the petition be referred to an advisory committee, or the Secretary within such period otherwise deems such referral necessary, the Secretary shall forthwith submit the petition and other data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal in the petition to the Secretary, together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary shall, after giving due consideration to all data then before him, including such report, recommendations, underlying data, and statement, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful; or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes.

(4) The regulations published under paragraph (2) or (3) of this subsection will be effective upon publication.

(5) Within thirty days after publication, any person adversely affected by a regulation published pursuant to paragraph (2) or (3) of this subsection, or pursuant to subsection (e), may file objections thereto with the Secretary, specifying with particularity the provisions of the regulation deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. A copy of the objections filed by a person other than the petitioner shall be served on the petitioner, if the regulation was issued pursuant to a petition. The petitioner shall have two weeks to make a written reply to the objections. The Secretary shall thereupon, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7 (c) of the Administrative Procedure Act (5 U. S. C., sec. 1096 (c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: Provided, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and by order make public a regulation. Such regulation shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the regulation is based. No such order shall take effect prior to the ninetieth day after its publication, unless the



Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

(e) The Secretary may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Secretary may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person, who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Secretary shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) or subsection (d).

(f) All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until publication of a regulation under paragraph (2) or (3) of subsection (d) of this section. Until such publication, such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section.

(g) Whenever the referral of a petition or proposal to an advisory committee is requested under this section, or the Secretary otherwise deems such referral necessary the Secretary shall forthwith appoint a committee of competent experts to review the petition or proposal and to make a report and recommendations thereon. Each such advisory committee shall be composed of experts, qualified in the subject matter of the petition and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(h) A person who has filed a petition or who has requested the referral of a proposal to an advisory committee in accordance with the provisions of this section, as well as representatives of the Department of Health, Education, and Welfare, shall have the right to consult with any advisory committee provided for in subsection (g) in connection with the petition or proposal.

(i) (1) In a case of actual controversy as to the validity of any order under subsection (d) (5), (e), or (l) any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part.

(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith served upon the Secretary, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Upon such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence



when considered on the record as a whole, including any report and recommendation of an advisory committee.

(3) In the case of a petition with respect to an order under subsection (l), a copy of the petition shall be forthwith served upon the Secretary of Agriculture, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Upon such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The courts shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

(j) The Secretary may, upon the request of any person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act or upon his own initiative, establish a temporary tolerance for the pesticide chemical for the uses covered by the permit whenever in his judgment such action is deemed necessary to protect the public health, or may temporarily exempt such pesticide chemical from a tolerance. In establishing such a tolerance, the Secretary shall give due regard to the necessity for experimental work in developing an adequate, wholesome, and economical food supply and to the limited hazard to the public health involved in such work when conducted in accordance with applicable regulations under the Federal Insecticide, Fungicide, and Rodenticide Act.

(k) Regulations affecting pesticide chemicals in or on raw agricultural commodities which are promulgated under the authority of section 406 (a) upon the basis of public hearings instituted before January 1, 1953, in accordance with section 701 (e), shall be deemed to be regulations under this section and shall be subject to amendment or repeal as provided in subsection (m).

(t) The Secretary of Agriculture, upon request of any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d) (1) with respect to a pesticide chemical which constitutes, or is an ingredient of, such economic poison, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Secretary deems it necessary to postpone action for such period, on the basis of data before him, either—

(1) certify to the Secretary of Health, Education, and Welfare that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Secretary of Agriculture takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Secretary may by order make the certification as proposed. In the event that the action described in clause (A) or (C) is taken, the Secretary shall by order make the certification as proposed with respect to such parts thereof as are requested. In the event a hearing is requested, the Secretary of Agriculture shall provide opportunity for a prompt hearing. The certification of the Secretary of

*Agriculture as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Secretary of Agriculture exceed one hundred and sixty days. The Secretary shall submit to the Secretary of Health, Education, and Welfare with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Secretary of Agriculture, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.*

*(m) The Secretary of Health, Education, and Welfare shall prescribe by regulations the procedure by which regulations under this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of regulations establishing tolerances, including the appointment of advisory committees and the procedure for referring petitions to such committees.*

*(n) The provisions of section 303 (c) of the Federal Food, Drug, and Cosmetic Act with respect to the furnishing of guaranties shall be applicable to raw agricultural commodities covered by this section.*

○







83<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 7125

[Report No. 1385]

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 1954

Mr. MILLER of Nebraska introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

MARCH 23, 1954

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That section 201 of the Federal Food, Drug, and Cosmetic  
4       Act is amended by adding at the end thereof the following  
5       new paragraphs:

6       “(q) The term ‘pesticide chemical’ means any sub-  
7       stance which, alone, in chemical combination or in formu-  
8       lation with one or more other substances, is an ‘economic  
9       poison’ within the meaning of the Federal Insecticide,  
10      Fungicide, and Rodenticide Act (7 U. S. C., secs.

1 135-135k) as now in force or as hereafter amended, and  
2 which is used in the production, storage, or transportation  
3 of raw agricultural commodities.

4 “(r) The term ‘raw agricultural commodity’ means  
5 any food in its raw or natural state, including all fruits that  
6 are washed, colored, or otherwise treated in their unpeeled  
7 natural form prior to marketing.”

8 SEC. 2. Clause (2) of section 402 (a) of the Federal  
9 Food, Drug, and Cosmetic Act is amended to read as follows:  
10 “(2) if it bears or contains any added poisonous or added  
11 deleterious substance, except a pesticide chemical in or on a  
12 raw agricultural commodity, which is unsafe within the  
13 meaning of section 406, or if it is a raw agricultural com-  
14 modity and it bears or contains a pesticide chemical which is  
15 unsafe within the meaning of section 408 (a) ;”.

16 SEC. 3. Chapter IV of the Federal Food, Drug, and Cos-  
17 metic Act is amended by adding at the end thereof the fol-  
18 lowing new section:

19 “TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW  
20 AGRICULTURAL COMMODITIES

21 “SEC. 408. (a) Any poisonous or deleterious pesticide  
22 chemical, or any pesticide chemical which is not generally  
23 recognized, among experts qualified by scientific training and  
24 experience to evaluate the safety of pesticide chemicals, as



1 safe for use, added to a raw agricultural commodity, shall be  
2 deemed unsafe for the purposes of the application of clause  
3 (2) of section 402 (a) unless—

4 “(1) a tolerance for such pesticide chemical in or  
5 on the raw agricultural commodity has been prescribed  
6 by the Secretary of Health, Education, and Welfare  
7 under this section and the quantity of such pesticide  
8 chemical in or on the raw agricultural commodity is  
9 within the limits of the tolerance so prescribed; or

10 “(2) with respect to use in or on such raw agri-  
11 cultural commodity, the pesticide chemical has been  
12 exempted from the requirement of a tolerance by the  
13 Secretary under this section.

14 While a tolerance or exemption from tolerance is in effect  
15 for a pesticide chemical with respect to any raw agricultural  
16 commodity, such raw agricultural commodity shall not, by  
17 reason of bearing or containing any added amount of such  
18 pesticide chemical, be considered to be adulterated within  
19 the meaning of clause (1) of section 402 (a).

20 “(b) The Secretary shall promulgate regulations es-  
21 tablishing tolerances with respect to the use in or on raw  
22 agricultural commodities of poisonous or deleterious pesti-  
23 cide chemicals and of pesticide chemicals which are not gen-  
24 erally recognized, among experts qualified by scientific train-

1 ing and experience to evaluate the safety of pesticide chemi-  
2 cals, as safe for use, to the extent necessary to protect the  
3 public health. In establishing any such regulation, the  
4 Secretary shall give appropriate consideration, among other  
5 relevant factors, (1) to the necessity for the production  
6 of an adequate, wholesome, and economical food supply;  
7 (2) to the other ways in which the consumer may be af-  
8 fected by the same pesticide chemical or by other related  
9 substances that are poisonous or deleterious; and (3) to  
10 the opinion of the Secretary of Agriculture as submitted with  
11 a certification of usefulness under subsection ~~(1)~~ (1) of this  
12 section. Such regulations shall be promulgated in the man-  
13 ner prescribed in subsection (d) or (e) of this section. In  
14 carrying out the provisions of this section relating to the  
15 establishment of tolerances, the Secretary may establish  
16 the tolerance applicable with respect to the use of any  
17 pesticide chemical in or on any raw agricultural commodity  
18 at zero level if the scientific data before the Secretary does  
19 not justify the establishment of a greater tolerance.

20 “(c) The Secretary shall promulgate regulations ex-  
21 empting any pesticide chemical from the necessity of a  
22 tolerance with respect to use in or on any or all raw agricul-  
23 tural commodities when such a tolerance is not necessary to  
24 protect the public health. Such regulations shall be promul-

1 gated in the manner prescribed in subsection (d) or (e)  
2 of this section.

3 “(d) (1) Any person who has registered, or who has  
4 submitted an application for the registration of, an economic  
5 poison under the Federal Insecticide, Fungicide, and Roden-  
6 ticide Act may file with the Secretary of Health, Education,  
7 and Welfare, a petition proposing the issuance of a regulation  
8 establishing a tolerance for a pesticide chemical which consti-  
9 tutes, or is an ingredient of, such economic poison, or  
10 exempting the pesticide chemical from *the requirement of*  
11 a tolerance. The petition shall contain data showing—

12 “(A) the name, chemical identity, and composition  
13 of the pesticide chemical;

14 “(B) the amount, frequency, and time of application  
15 of the pesticide chemical;

16 “(C) full reports of investigations made with respect  
17 to the safety of the pesticide chemical;

18 “(D) the results of tests on the amount of residue  
19 remaining, including a description of the analytical  
20 methods used;

21 “(E) practicable methods for removing residue  
22 which exceeds any proposed tolerance;

23 “(F) proposed tolerances for the pesticide chemical  
24 if tolerances are proposed; and



1       “(G) reasonable grounds in support of the petition.  
 2 Samples of the pesticide chemical shall be furnished to the  
 3 Secretary upon request. Notice of the filing of such petition  
 4 shall be published in general terms by the Secretary within  
 5 thirty days after filing. Such notice shall include the  
 6 analytical methods available for the determination of the  
 7 residue of the pesticide chemical for which a tolerance or  
 8 exemption is proposed.

9       “(2) Within ninety days after a certification of useful-  
 10 ness by the Secretary of Agriculture under subsection ~~(1)~~  
 11 *(l)* with respect to the pesticide chemical named in the peti-  
 12 tion, the Secretary of *Health, Education, and Welfare* shall,  
 13 after giving due consideration to the data submitted in the  
 14 petition or otherwise before him, by order make public a  
 15 regulation—

16               “(A) establishing a tolerance for the pesticide  
 17 chemical named in the petition for the purposes for  
 18 which it is so certified as useful, or

19               “(B) exempting the pesticide chemical from the  
 20 necessity of a tolerance for such purposes,  
 21 unless within such ninety-day period the person filing the  
 22 petition requests that the petition be referred to an advisory  
 23 committee or the Secretary within such period otherwise  
 24 deems such referral necessary, in either of which ~~event~~ *events*

1 the provisions of paragraph (3) of this subsection shall apply  
2 in lieu hereof.

3 “(3) In the event that the person filing the petition  
4 requests, within ninety days after a certification of useful-  
5 ness by the Secretary of Agriculture under subsection ~~(1)~~  
6 *(l)* with respect to the pesticide chemical named in the peti-  
7 tion, that the petition be referred to an advisory committee,  
8 or *in the event* the Secretary of Health, Education, and Wel-  
9 fare within such period otherwise deems such referral nec-  
10 essary, the Secretary of Health, Education, and Welfare  
11 shall forthwith submit the petition and other data  
12 before him to an advisory committee to be appointed  
13 in accordance with subsection (g) of this section. As  
14 soon as practicable after such referral, but not later than  
15 sixty days thereafter, unless extended as hereinafter provided,  
16 the committee shall, after independent study of the data  
17 submitted to it by the Secretary and other data before it,  
18 certify to the Secretary a report and recommendations on the  
19 proposal in the petition to the Secretary, together with all  
20 underlying data and a statement of the reasons or basis for  
21 the recommendations. The sixty-day period provided for  
22 herein may be extended by the advisory committee for an  
23 additional thirty days if the advisory committee deems this  
24 necessary. Within thirty days after such certification, the

1 Secretary shall, after giving due consideration to all data  
2 then before him, including such report, recommendations,  
3 underlying data, and statement, by order make public a  
4 regulation—

5 “(A) establishing a tolerance for the pesticide  
6 chemical named in the petition for the purposes for  
7 which it is so certified as useful; or

8 “(B) exempting the pesticide chemical from the  
9 necessity of a tolerance for such purposes.

10 “(4) The regulations published under paragraph (2)  
11 or (3) of this subsection will be effective upon publication.

12 “(5) Within thirty days after publication, any person  
13 adversely affected by a regulation published pursuant to  
14 paragraph (2) or (3) of this subsection, or pursuant to  
15 subsection (e), may file objections thereto with the Secre-  
16 tary, specifying with particularity the provisions of the  
17 regulation deemed objectionable, stating reasonable grounds  
18 therefor, and requesting a public hearing upon such objec-  
19 tions. A copy of the objections filed by a person other than  
20 the petitioner shall be served on the petitioner, if the regu-  
21 lation was issued pursuant to a petition. The petitioner shall  
22 have two weeks to make a written reply to the objections.  
23 The Secretary shall thereupon, after due notice, hold such  
24 public hearing for the purpose of receiving evidence relevant  
25 and material to the issues raised by such objections. Any



1 report, recommendations, underlying data, and reasons certi-  
2 fied to the Secretary by an advisory committee shall be made  
3 a part of the record of the hearing, if relevant and material,  
4 subject to the provisions of section 7 (c) of the Adminis-  
5 trative Procedure Act (5 U. S. C., sec. 1006 (c) ). The  
6 National Academy of Sciences shall designate a member of  
7 the advisory committee to appear and testify at any such  
8 hearing with respect to the report and recommendations of  
9 such committee upon request of the Secretary, the petitioner,  
10 or the officer conducting the hearing: *Provided*, That this  
11 shall not preclude any other member of the advisory com-  
12 mittee from appearing and testifying at such hearing. As  
13 soon as practicable after completion of the hearing, the  
14 Secretary shall act upon such objections and by order make  
15 public a regulation. Such regulation shall be based only on  
16 substantial evidence of record at such hearing, including any  
17 report, recommendations, underlying data, and reasons cer-  
18 tified to the Secretary by an advisory committee, and shall  
19 set forth detailed findings of fact upon which the regulation  
20 is based. No such order shall take effect prior to the nine-  
21 tieth day after its publication, unless the Secretary finds that  
22 emergency conditions exist necessitating an earlier effective  
23 date, in which event the Secretary shall specify in the order  
24 his findings as to such conditions.

1       “(e) The Secretary may at any time, upon his own  
2 initiative or upon the request of any interested person, pro-  
3 pose the issuance of a regulation establishing a tolerance for  
4 a pesticide chemical or exempting it from the necessity of  
5 a tolerance. Thirty days after publication of such a pro-  
6 posal, the Secretary may by order publish a regulation based  
7 upon the proposal which shall become effective upon publi-  
8 cation unless within such thirty-day period a ~~person~~, *person*  
9 who has registered, or who has submitted an application for the  
10 registration of, an economic poison under the Federal In-  
11 secticide, Fungicide, and Rodenticide Act containing the  
12 pesticide chemical named in the proposal, requests that  
13 the proposal be referred to an advisory committee. In the  
14 event of such a request, the Secretary shall forthwith sub-  
15 mit the proposal and other relevant data before him to an  
16 advisory committee to be appointed in accordance with  
17 subsection (g) of this section. As soon as practicable after  
18 such referral, but not later than sixty days thereafter, unless  
19 extended as hereinafter provided, the committee shall, after  
20 independent study of the data submitted to it by the Secre-  
21 tary and other data before it, certify to the Secretary a  
22 report and recommendations on the proposal together with  
23 all underlying data and a statement of the reasons or basis  
24 for the recommendations. The sixty-day period provided for  
25 herein may be extended by the advisory committee for

1 an additional thirty days if the advisory committee deems  
2 this necessary. Within thirty days after such certification,  
3 the Secretary may, after giving due consideration to all  
4 data before him, including such report, recommendations,  
5 underlying data and statement, by order publish a regulation  
6 establishing a tolerance for the pesticide chemical named  
7 in the proposal or exempting it from the necessity of a toler-  
8 ance which shall become effective upon publication. Regu-  
9 lations issued under this subsection shall upon publication be  
10 subject to paragraph (5) ~~or~~ of subsection (d).

11 “(f) All data submitted to the Secretary or to an  
12 advisory committee in support of a petition under this section  
13 shall be considered confidential by the Secretary and by  
14 such advisory committee until publication of a regulation  
15 under paragraph (2) or (3) of subsection (d) of this  
16 section. Until such publication, such data shall not be  
17 revealed to any person other than those authorized by the  
18 Secretary or by an advisory committee in the carrying out  
19 of their official duties under this section.

20 “(g) Whenever the referral of a petition or proposal  
21 to an advisory committee is requested under this section, or  
22 the Secretary otherwise deems such referral necessary the  
23 Secretary shall forthwith appoint a committee of competent  
24 experts to review the petition or proposal and to make a  
25 report and recommendations thereon. Each such advisory



1 committee shall be composed of experts, qualified in the  
2 subject matter of the petition and of adequately diversified  
3 professional background selected by the National Academy  
4 of Sciences and shall include one or more representatives  
5 from land-grant colleges. The size of the committee shall  
6 be determined by the Secretary. Members of an advisory  
7 committee shall receive as compensation for their services  
8 a reasonable per diem, which the Secretary shall by rules  
9 and regulations prescribe, for time actually spent in the  
10 work of the committee, and shall in addition be reimbursed  
11 for their necessary traveling and subsistence expenses while  
12 so serving away from their places of residence. The mem-  
13 bers shall not be subject to any other provisions of law  
14 regarding the appointment and compensation of employees  
15 of the United States. The Secretary shall furnish the com-  
16 mittee with adequate clerical and other assistance, and shall  
17 by rules and regulations prescribe the procedure to be  
18 followed by the committee.

19       “(h) A person who has filed a petition or who has  
20 requested the referral of a proposal to an advisory committee  
21 in accordance with the provisions of this section, as well  
22 as representatives of the Department of Health, Education,  
23 and Welfare, shall have the right to consult with any  
24 advisory committee provided for in subsection (g) in con-  
25 nection with the petition or proposal.

1       “(i) (1) In a case of actual controversy as to the  
2 validity of any order under subsection (d) (5), (e), or ~~(1)~~  
3 *(l)* any person who will be adversely affected by such order  
4 may obtain judicial review by filing in the United States Court  
5 of Appeals for the circuit wherein such person resides or  
6 has his principal place of business, or in the United States  
7 Court of Appeals for the District of Columbia Circuit, within  
8 sixty days after the entry of such order, a petition praying  
9 that the order be set aside in whole or in part.

10       “(2) In the case of a petition with respect to an order  
11 under subsection (d) (5) or (e), a copy of the petition  
12 shall be forthwith served upon the Secretary, or upon any  
13 officer designated by him for that purpose, and thereupon  
14 the Secretary shall certify and file in the court a transcript  
15 of the proceedings and the record on which he based his  
16 order. Upon such filing, the court shall have exclusive juris-  
17 diction to affirm or set aside the order complained of in  
18 whole or in part. The findings of the Secretary with re-  
19 spect to questions of fact shall be sustained if supported by  
20 substantial evidence when considered on the record as a  
21 whole, including any report and recommendation of an  
22 advisory committee.

23       “(3) In the case of a petition with respect to an order  
24 under subsection ~~(1)~~ *(l)*, a copy of the petition shall be forth-  
25 with served upon the Secretary of Agriculture, or upon any

1 officer designated by him for that purpose, and thereupon the  
2 Secretary shall certify and file in the court a transcript of  
3 the proceedings and the record on which he based his order.  
4 Upon such filing, the court shall have exclusive jurisdiction  
5 to affirm or set aside the order complained of in whole or in  
6 part. The findings of the Secretary with respect to ques-  
7 tions of fact shall be sustained if supported by substantial  
8 evidence when considered on the record as a whole.

9 “(4) If application is made to the court for leave to  
10 adduce additional evidence, the court may order such addi-  
11 tional evidence to be taken before the Secretary of Health,  
12 Education, and Welfare or the Secretary of Agriculture, as  
13 the case may be, and to be adduced upon the hearing in such  
14 manner and upon such terms and conditions as to the court  
15 may seem proper, if such evidence is material and there were  
16 reasonable grounds for failure to adduce such evidence in the  
17 proceedings below. The Secretary of Health, Education,  
18 and Welfare or the Secretary of Agriculture, as the case may  
19 be, may modify his findings as to the facts and order by  
20 reason of the additional evidence so taken, and shall file with  
21 the court such modified findings and order.

22 “(5) The judgment of the court affirming or setting  
23 aside, in whole or in part, any order under this section  
24 shall be final, subject to review by the Supreme Court of  
25 the United States upon certiorari or certification as pro-



1 vided in section 1254 of title 28 of the United States  
2 Code. The commencement of proceedings under this sec-  
3 tion shall not, unless specifically ordered by the court to  
4 the contrary, operate as a stay of an order. The courts  
5 shall advance on the docket and expedite the disposition  
6 of all causes filed therein pursuant to this section.

7 “(j) The Secretary may, upon the request of any  
8 person who has obtained an experimental permit for a  
9 pesticide chemical under the Federal Insecticide, Fungi-  
10 cide, and Rodenticide Act or upon his own initiative, es-  
11 tablish a temporary tolerance for the pesticide chemical  
12 for the uses covered by the permit whenever in his judg-  
13 ment such action is deemed necessary to protect the public  
14 health, or may temporarily exempt such pesticide chemical  
15 from a tolerance. In establishing such a tolerance, the Sec-  
16 retary shall give due regard to the necessity for experi-  
17 mental work in developing an adequate, wholesome, and  
18 economical food supply and to the limited hazard to the  
19 public health involved in such work when conducted in  
20 accordance with applicable regulations under the Federal  
21 Insecticide, Fungicide, and Rodenticide Act.

22 “(k) Regulations affecting pesticide chemicals in or on  
23 raw agricultural commodities which are promulgated under  
24 the authority of section 406 (a) upon the basis of public  
25 hearings instituted before January 1, 1953, in accordance

1 with section 701 (e), shall be deemed to be regulations  
2 under this section and shall be subject to amendment or  
3 repeal as provided in subsection (m).

4 “(l) The Secretary of Agriculture, upon request of any  
5 person who has registered, or who has submitted an appli-  
6 cation for the registration of, an economic poison under the  
7 Federal Insecticide, Fungicide, and Rodenticide Act, and  
8 whose request is accompanied by a copy of a petition filed  
9 by such person under subsection (d) (1) with respect to  
10 a pesticide chemical which constitutes, or is an ingredient  
11 of, such economic poison, shall, within thirty days or within  
12 sixty days if upon notice prior to the termination of such  
13 thirty days the Secretary deems it necessary to postpone  
14 action for such period, on the basis of data before him,  
15 either—

16 “(1) certify to the Secretary of Health, Education,  
17 and Welfare that such pesticide chemical is useful for  
18 the purpose for which a tolerance or exemption is  
19 sought; or

20 “(2) notify the person requesting the certification  
21 of his proposal to certify that the pesticide chemical  
22 does not appear to be useful for the purpose for which  
23 a tolerance or exemption is sought, or appears to be  
24 useful for only some of the purposes for which a toler-  
25 ance or exemption is sought.

1 In the event that the Secretary of Agriculture takes the  
2 action described in clause (2) of the preceding sentence,  
3 the person requesting the certification, within one week  
4 after receiving the proposed certification, may either (A)  
5 request the Secretary of Agriculture to certify to the Secre-  
6 tary of Health, Education, and Welfare on the basis of the  
7 proposed certification; (B) request a hearing on the pro-  
8 posed certification or the parts thereof objected to; or (C)  
9 request both such certification and such hearing. If no such  
10 action is taken, the Secretary may by order make the  
11 certification as proposed. In the event that the action de-  
12 scribed in clause (A) or (C) is taken, the Secretary shall  
13 by order make the certification as proposed with respect to  
14 such parts thereof as are requested. In the event a hearing  
15 is requested, the Secretary of Agriculture shall provide  
16 opportunity for a prompt hearing. The certification of the  
17 Secretary of Agriculture as the result of such hearing shall  
18 be made by order and shall be based only on substantial  
19 evidence of record at the hearing and shall set forth detailed  
20 findings of fact. In no event shall the time elapsing between  
21 the making of a request for a certification under this sub-  
22 section and final certification by the Secretary of Agriculture  
23 exceed one hundred and sixty days. The Secretary shall  
24 submit to the Secretary of Health, Education, and Welfare  
25 with any certification of usefulness under this subsection



1 an opinion, based on the data before him, whether the tol-  
2 erance or exemption proposed by the petitioner reasonably  
3 reflects the amount of residue likely to result when the pesti-  
4 cide chemical is used in the manner proposed for the purpose  
5 for which the certification is made. The Secretary of Agricul-  
6 ture, after due notice and opportunity for public hearing,  
7 is authorized to promulgate rules and regulations for carrying  
8 out the provisions of this subsection.

9 “(m) The Secretary of Health, Education, and Welfare  
10 shall prescribe by regulations the procedure by which regu-  
11 lations under this section may be amended or repealed, and  
12 such procedure shall conform to the procedure provided in  
13 this section for the promulgation of regulations establishing  
14 tolerances, including the appointment of advisory committees  
15 and the procedure for referring petitions to such committees.

16 “(n) The provisions of section 303 (c) of the Federal  
17 Food, Drug, and Cosmetic Act with respect to the furnish-  
18 ing of guaranties shall be applicable to raw agricultural com-  
19 modities covered by this section.”

20 SEC. 4. There are hereby authorized to be appropriated,  
21 out of any moneys in the Treasury not otherwise appro-  
22 priated, such sums as may be necessary for the purpose and  
23 administration of this Act.

24 SEC. 5. This Act shall take effect upon the date of its  
25 enactment, except that with respect to pesticide chemicals

1 for which tolerances or exemptions have not been established  
2 under section 408 of the Federal Food, Drug, and Cosmetic  
3 Act, the amendment to section 402 (a) of such Act made  
4 by section 2 of this Act shall not be effective—

5 (1) for the period of one year following the date  
6 of the enactment of this Act; or

7 (2) for such additional period following such period  
8 of one year, but not extending beyond two years after  
9 the date of the enactment of this Act, as the Secretary  
10 of Health, Education, and Welfare may prescribe on the  
11 basis of a finding that conditions exist which necessitate  
12 the prescribing of such additional period.

83d CONGRESS  
2d Session

# H. R. 7125

[Report No. 1385]

## A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticides chemicals in or on raw agricultural commodities.

By Mr. MULLER of Nebraska

JANUARY 11, 1954

Referred to the Committee on Interstate and Foreign  
Commerce

MARCH 23, 1954

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed







# Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE  
(For Department Staff Only)

Issued April 6, 1954  
For actions of April 5, 1954  
83rd-2nd, No. 62

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HIGHLIGHTS: House passed bills to: Authorize land banks to purchase FPMC assets; liberalize plant patenting law; regulate pesticide chemicals on food; establish single incentive-awards program. House debated Interior appropriation bill. House agreed to conference report on Mexican farm-labor appropriation measure. Rep. Willis urged increased mainland cane-sugar quota. Senate debated road-authorization bill. Sen. Aiken introduced bills on emergency farm loans, crop-insurance financing, and tenant-loan encouragement. Senate passed bills to: Authorize Attorney General to conduct certain crime investigations; remove limitations on Miles City research-land transfer. Sen. Ellender recommended increased mainland cane-sugar quota.

## HOUSE

1. PESTICIDE CHEMICALS. Passed as reported H. R. 7125, to prohibit the use of pesticide chemicals as additives to raw agricultural commodities unless the quantity does not exceed the limits of tolerance as established by HEW or is exempted from the requirement of tolerance by the Secretary of HEW, and to provide for regulations for classifications of pesticide chemicals according to the degree of tolerance, etc. (pp. 4334-6).
2. FARM LOANS. Passed without amendment H. R. 6711, to further amend section 13 of the Federal Farm Loan Act so as to authorize the Federal land banks to make a bulk purchase of certain remaining assets of the Federal Farm Mortgage Corporation (pp. 4336-7).  
Received from this Department a proposed bill to eliminate the requirement that economic disaster loans be restricted to areas designated by the President and to make additional funds available for economic emergency loans; to Agriculture Committee (p. 4370).
3. RESEARCH. Passed as reported H. R. 5420, which provides that whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings (other



than a tuberpropagated plant or a plant found in an uncultivated state) may obtain a patent therefor under the Plant Patent Act (p. 4337).

Passed without amendment S. 1456, to authorize the Gorgas Memorial Institute to accept funds from Latin American governments for its maintenance (p. 4332). This bill will now be sent to the President.

4. PERSONNEL. Passed with amendments H. R. 7774, the proposed "Federal Employees Incentive Awards Act of 1954" (pp. 4328-31). The bill provides as follows: Imposes a duty on each administrator to establish an incentive awards program for his department or agency in accordance with standards and regulations of the Civil Service Commission. Places the responsibility on the Commission to inspect these programs and to request the administrator to revise or modify his plan if necessary. Authorizes the Commission to establish an incentive awards office, appoint a director thereof, and delegate to him whatever duties it deems necessary. Establishes the line of administrative authority from the director of the incentive awards office directly to the Executive Director of the Commission. Authorizes departments to pay cash awards and expenses for honorary recognition from their general appropriations; and permits a number of different departments who have all benefited from a single suggestion to share in the award granted therefor. Places a limitation of \$5,000 on an individual cash award which an administrator can grant under his own authority, but permits such awards up to \$25,000 if approved by the Commission. Authorizes the President to pay additional cash awards and incur expenses for honorary recognition if a suggestion or invention is of a highly meritorious or exceptional nature. States that due weight shall be given to awards in considering employees for promotion. Repeals all existing laws governing incentive-awards programs. Establishes the effective date of the bill as 90 days after its enactment.

Rep. Hagen, subcommittee chairman, stated: "I want to emphasize at this point that section 3 (a) of this bill will permit departments and agencies to continue the practice of granting length-of-service awards for longevity as is presently done under authority of Public Law 600 of the 79th Congress" (p. 4329).

5. CIVIL DEFENSE. Passed without amendment H. R. 7308, to repeal Sec. 307 of the Federal Civil Defense Act of 1950 which provides for termination of title III (emergency authority) on June 30, 1954 (p. 4328).
6. FARM LABOR. Agreed to the conference report on H. J. Res. 461, appropriating \$478,000 additional to the Labor Department for the Mexican farm labor program (p. 4324).
7. INTERIOR APPROPRIATION BILL, 1955. Began debate on this bill, H. R. 8680 (pp. 4340-61). A considerable portion of the debate was on reclamation and electrification items.
8. SUGAR. Rep. Willis urged an increase in the quota of the mainland cane sugar area from 500,000 to 600,000 tons of raw sugar (pp. 4368-70).
9. TUNA IMPORTS. Rep. King, Calif., urged increased restrictions on tuna imports (pp. 4361-2).

#### SENATE

10. ROAD AUTHORIZATIONS. Began debate on S. 3184, to authorize road appropriations for the fiscal years 1956 and 1957 (pp. 4310-2).
11. SUGAR. Sen. Ellender spoke in favor of his bill, S. 3019, to increase the domestic sugarcane quota by 100,000 tons (pp. 4318-9).



in Boulder County, Colo., which tract was conveyed without compensation to the United States Government represented by the Secretary of Commerce, as a site for a radio laboratory under authority of Public law 366, 81st Congress, approved October 25, 1949 (63 Stat. 886), the said land reconveyed to be used by the city of Boulder, Colo., as part of a site for a water reservoir.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### FINALITY CLAUSES IN GOVERNMENT CONTRACTS

The Clerk called the bill (S. 24) to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts, in cases other than those in which fraud is alleged, and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. WITHROW. Mr. Speaker, I object.

#### RAILWAY INSTALLATIONS, PUBLIC HEALTH SERVICE HOSPITAL, NEW ORLEANS

The Clerk called the bill (H. R. 6870) to amend the act of February 13, 1900 (31 Stat. 28) by approving existing railway installations and authorizing further railway installations on the batture in front of the Public Health Service hospital property in New Orleans, La.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That section 1 of the act of Congress approved February 13, 1900 (31 Stat. 28), granting permission and authority to the Orleans levee board to move, without cost to the United States, the existing line of levee in front of the Public Health Service hospital property in New Orleans, La., and for other purposes, be amended so as to read as follows:

"SECTION 1. (a) That permission and authority be, and they are hereby, granted to the Orleans levee board to move, without cost to the United States, the existing line of levee in front of the United States Public Health Service hospital property in New Orleans, La., in the square bounded by State Street, Henry Clay Avenue, Tchoupitoulas Street, and the Mississippi River; said line of levee to be moved outwardly in the direction of said river to the new line of levee established by the said Orleans levee board, and that the city of New Orleans be, and it is hereby, authorized to extend, lay out, open, and to keep open, through the said Public Health Service hospital property, the street known as Leake Avenue (Front Street), 110 feet wide, extending from Peniston Street to the upper limits of the city of New Orleans, a distance of about 5 miles, as provided for under ordinance of the city of New Orleans, numbered 15,080, council series, approved March 1, 1899: *Provided,* That in case the said city of New Orleans has granted, or shall grant, a right-of-way over said street to any railway company, corporation, firm, or person, or that said street shall be used for railway purposes, such grant, privilege, or use shall be upon condition that no part of said street within the limits of said Public Health Service hospital property (or within 1,000 feet from the same) shall be used for depot purposes, or railroad yard, or for the purposes of switching, shifting, or parking cars, or mak-

ing up or breaking up trains of cars, or for any other purpose than the ordinary transit, without stopping, of railway trains excepting, however, the stopping of cars by reason of the automatic interlocking located at the intersection of the tracks of the Illinois Central Railroad and the Public Belt Railroad Commission between Jefferson Avenue and Octavia Street when the crossing is occupied by opposing trains: *And provided further,* That the inner line of said Leake Avenue (Front Street) shall not be located at any point nearer than eight feet to the present iron fence enclosing the grounds of said Public Health Service hospital property; and the violation of any of the provisions of this act shall, as to the person, company, railway company, municipal corporation, or other corporation so violating any of said provisions, cause a revocation of all rights and privileges given or granted by this act.

"(b) The existing railway side tracks and related rail facilities of the Public Belt Railroad Commission, the following-described center lines of which are located within the area set forth in paragraph (a) hereof are hereby approved: as shown on Public Belt Railroad Plan No. A-14-57, revised July 6, 1953.

"(1) A certain track designated as 'old Mengel Switch,' beginning at a point designated 'E' approximately 15 feet riverward from Public Belt river main track, said point 'E' being 1,000 feet in an upstream direction from the northeast corner of Henry Clay Avenue and Leake Avenue; then by a line bearing approximately south forty-two degrees east, a distance of approximately forty-seven feet; thence by a twelve-degree thirty-minute curve to the left, a distance of approximately eighty feet; thence by a line approximately twenty-six feet riverward from and parallel to Public Belt river main track bearing approximately south fifty degrees east, a distance of approximately three hundred feet to point designated 'F,' the end of the existing track, said point 'F' being approximately six hundred feet from the northeast corner of Henry Clay Avenue and Leake Avenue, measured along a straight line.

"(2) A certain track designated as 'number 1,' beginning at a point designated by the letter 'G,' said point 'G' being on Public Belt river main track at a distance of approximately two hundred and seventy-eight feet upstream from the northwest corner of State Street and Leake Avenue, measured along a straight line; thence by a number 7 turnout and curve to the right, a distance of approximately ninety feet in a downstream direction; thence by a ten-degree curve to the left, a distance of approximately two hundred and thirty feet in a downstream direction; thence by a line bearing approximately north eighty-nine degrees east, thirteen feet riverward from and parallel to Public Belt river main track, a distance of approximately nine hundred and sixty-five feet to point designated 'H,' said point 'H' being one thousand feet in a downstream direction from northwest corner of State Street and Leake Avenue, measured along a straight line.

"(3) A certain track designated as 'number 2,' beginning at a point designated 'J,' said point designated 'J' being on track number 1 approximately five hundred and thirty feet downstream from the northwest corner of State Street and Leake Avenue, measured along a straight line; thence by a number 7 turnout to the right, a distance of approximately seventy feet; thence by a line bearing approximately south eight-two degrees east, a distance of approximately forty-eight feet; thence by a twenty-four degree thirty minute curve to the left, a distance of approximately forty-five feet; thence by a line approximately sixteen feet riverward from and parallel to track number

1 bearing approximately north eighty-nine degrees east, a distance of approximately two hundred feet; thence by a twenty-four degree thirty minute curve to the right, a distance of approximately sixty feet; thence by a line bearing approximately south seventy-nine degrees east, a distance of approximately fifty feet to point designated 'K,' said point designated 'K' being one thousand feet downstream from the northwest corner of State Street and Leake Avenue, measured along a straight line.

"(4) A certain track designated as 'track number 3,' beginning at a point designated by the letter 'L,' said point 'L' being on aforesaid track number 2, at a point approximately eight hundred and twenty feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line; thence by a number 5 turnout to the right, a distance of approximately fifty feet; thence by a line bearing approximately south seventy-nine degrees east, a distance of one hundred and twenty-five feet to a point designated 'M,' said point 'M' being one thousand feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line.

"(5) A certain track designated as 'track number 4,' beginning on track number 2 at a point designated by the letter 'N,' said point 'N' being approximately seven hundred and fifty-six feet downstream from the northwest corner of State Street and Leake Avenue, measured along a straight line; thence by a number 5 turnout to the right, a distance of approximately fifty feet; thence by a line bearing approximately south seventy-nine degrees east, a distance of approximately one hundred and ninety-two feet to point designated 'O,' said point 'O' being one thousand feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line.

"(6) A certain track designated as 'track number five,' beginning at a point on track number 2, designated by the letter 'P,' said point 'P' being approximately six hundred and ninety feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line; thence by a number 5 turnout to the right, a distance of approximately fifty feet; thence by a line bearing approximately south seventy-nine degrees east, a distance of approximately two hundred and fifty-eight feet to point designated 'Q,' said point 'Q' being one thousand feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line.

"(7) A certain track designated as 'track number six,' beginning at a point on track number 1, designated by the letter 'R,' said point 'R' being approximately one hundred and thirty feet from the northwest corner of State Street and Leake Avenue, measured in a southwesterly direction along a straight line; thence by a number 7 turnout to the right, a distance of approximately eighty feet in a downstream direction, thence by a ten degree curve to the left, a distance of approximately one hundred and thirty-eight feet; thence by a line approximately eighteen feet riverward from and parallel to track number 1 bearing approximately north eighty-nine degrees east, a distance of approximately three hundred and seventy feet; thence by a twelve degree thirty minute curve to the right a distance of approximately sixty-five feet; thence by a line bearing approximately south eighty-two degrees east, a distance of approximately three hundred twelve feet; thence by an eight degree curve to the right, a distance of approximately eighty-three feet; thence by a line bearing approximately south seventy-seven degrees east, a distance of approximately forty-two feet to point designated 'S,' said



point 'S' being one thousand feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line.

"(8) A certain track designated as 'track number seven', beginning at a point on track number 6, designated by the letter 'T', said point 'T' being approximately one hundred and thirty feet from the northwest corner of State Street and Leake Avenue, measured in a southeasterly direction along a straight line; thence by a number 7 turnout to the right, a distance of approximately ninety-two feet; thence by a twelve degree thirty minute curve to the left, a distance of approximately seventy-nine feet; thence by a line thirteen feet riverward from and parallel to track number 1, bearing approximately north eighty-nine degrees east, a distance of approximately two hundred and sixty feet; thence by a twelve degree thirty minute curve to the right, a distance of approximately sixty-three feet; thence by a line thirteen feet riverward from and parallel to track number 6 bearing south eighty-two degrees east, a distance of approximately two hundred and twenty feet; thence by an eight degree curve to the right, a distance of approximately eighty-five feet; thence by a line approximately nineteen feet riverward from and parallel to track number 6 bearing approximately south seventy-seven degrees east, a distance of approximately one hundred and twenty-eight feet to point designated 'U', said point 'U' being one thousand feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line.

"(c) The public-belt railroad commission is authorized to install two railway tracks and related railway facilities to serve the proposed Nashville Avenue wharf within the area described in paragraph (a) hereof, the center lines of which railway tracks are substantially as hereinafter described: *Provided*, That the switching of cars for the purpose of servicing the proposed Nashville Avenue wharf shall be permitted only between the hours of 6 o'clock antemeridian and 8 o'clock postmeridian.

"(1) Beginning at the end of the existing Old Mengel Switch at point designated 'F', said point 'F' being approximately six hundred feet upstream from the northeast corner of Henry Clay Avenue and Leake Avenue, measured along a straight line; thence by a line bearing approximately south fifty degrees east, a distance of approximately three hundred and twenty feet; thence by a three degree curve to the left, a distance of approximately one hundred and eighteen feet; thence by a line bearing approximately south fifty-four degrees east, a distance of approximately one thousand two hundred and seventy feet; thence by a twelve degree thirty minute curve to the left, a distance of approximately one hundred and seventy feet; thence by a line bearing approximately south seventy-five degrees east, a distance of approximately ninety-two feet; thence by a twelve degree thirty minute curve to the left, a distance of approximately sixty-six feet; thence by a line seven feet cityward from and parallel to the rear apron of the proposed Nashville Avenue wharf, bearing approximately south eighty-three degrees east, a distance of approximately six hundred and forty feet to a point designated 'V', said point 'V' being one thousand feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line.

"(2) Beginning at a point on the proposed track to serve proposed Nashville Avenue wharf, previously described, at a point designated by the letter 'W', said point 'W' being approximately six hundred feet from the northwest corner of Leake Avenue and State Street, measured in a southerly direction along a straight line; thence by a number 7

turnout to the left, a distance of approximately eighty feet; thence by a line twenty feet cityward from and parallel to the rear apron of the proposed Nashville Avenue wharf bearing approximately south eighty-three degrees east, a distance of approximately seven hundred and twenty-five feet to point designated 'X', said point 'X' being one thousand feet in a downstream direction from the northwest corner of State Street and Leake Avenue, measured along a straight line."

With the following committee amendment:

Page 9, line 18, after the word "That", insert the following: "(1) the type of construction and elevation of all tracks crossing the main line Mississippi River levee shall be subject to approval by the Corps of Engineers United States Army, and (2)."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

### AMENDING THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

The Clerk called the bill (H. R. 7125) to amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That section 201 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new paragraphs:

"(q) The term 'pesticide chemical' means any substance which, alone, in chemical combination or in formulation with one or more other substances, is an 'economic poison' within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U. S. C., secs. 135-135k) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

"(r) The term 'raw agricultural commodity' means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing."

SEC. 2. Clause (2) of section 402 (a) of the Federal Food, Drug, and Cosmetic Act is amended to read as follows: "(2) if it bears or contains any added poisonous or added deleterious substance, except a pesticide chemical in or on a raw agricultural commodity, which is unsafe within the meaning of section 406, or if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a);".

SEC. 3. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new section:

#### "TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

"SEC. 408. (a) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of clause (2) of section 402 (a) unless—

"(1) a tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by the Secretary of Health, Education, and Welfare under this

section and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

"(2) with respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance by the Secretary under this section.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of section 402 (a).

"(b) The Secretary shall promulgate regulations establishing tolerances with respect to the use in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals which are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In establishing any such regulation, the Secretary shall give appropriate consideration, among other relevant factors, (1) to the necessity for the production of an adequate, wholesome, and economical food supply; (2) to the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (3) to the opinion of the Secretary of Agriculture as submitted with a certification of usefulness under subsection (1) of this section. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section. In carrying out the provisions of this section relating to the establishment of tolerances, the Secretary may establish the tolerance applicable with respect to the use of any pesticide chemical in or on any raw agricultural commodity at zero level if the scientific data before the Secretary does not justify the establishment of a greater tolerance.

"(c) The Secretary shall promulgate regulations exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on any or all raw agricultural commodities when such a tolerance is not necessary to protect the public health. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section.

"(d) (1) Any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Secretary of Health, Education, and Welfare, a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of, such economic poison, or exempting the pesticide chemical from a tolerance. The petition shall contain data showing—

"(A) the name, chemical identity, and composition of the pesticide chemical;

"(B) the amount, frequency, and time of application of the pesticide chemical;

"(C) full reports of investigations made with respect to the safety of the pesticide chemical;

"(D) the results of tests on the amount of residue remaining, including a description of the analytical methods used;

"(E) practicable methods for removing residue which exceeds any proposed tolerance;

"(F) proposed tolerances for the pesticide chemical if tolerances are proposed; and

"(G) reasonable grounds in support of the petition. Samples of the pesticide chemical shall be furnished to the Secretary upon request. Notice of the filing of such petition



shall be published in general terms by the Secretary within 30 days after filing. Such notice shall include the analytical methods available for the determination of the residue of the pesticide chemical for which a tolerance or exemption is proposed.

"(2) Within 90 days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, the Secretary shall, after giving due consideration to the data submitted in the petition or otherwise before him, by order make public a regulation—

"(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful, or

"(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes,

unless within such 90-day period the person filing the petition requests that the petition be referred to an advisory committee or the Secretary within such period otherwise deems such referral necessary, in either of which event the provisions of paragraph (3) of this subsection shall apply in lieu hereof.

"(3) In the event that the person filing the petition requests, within 90 days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, that the petition be referred to an advisory committee, or the Secretary within such period otherwise deems such referral necessary, the Secretary shall forthwith submit the petition and other data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than 60 days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal in the petition to the Secretary, together with all underlying data and a statement of the reasons or basis for the recommendations. The 60-day period provided for herein may be extended by the advisory committee for an additional 30 days if the advisory committee deems this necessary. Within 30 days after such certification, the Secretary shall, after giving due consideration to all data then before him, including such report, recommendations, underlying data, and statement, by order make public a regulation—

"(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful; or

"(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes.

"(4) The regulations published under paragraph (2) or (3) of this subsection will be effective upon publication.

"(5) Within 30 days after publication, any person adversely affected by a regulation published pursuant to paragraph (2) or (3) of this subsection, or pursuant to subsection (e), may file objections thereto with the Secretary, specifying with particularity the provisions of the regulation deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. A copy of the objections filed by a person other than the petitioner shall be served on the petitioner, if the regulation was issued pursuant to a petition. The petitioner shall have 2 weeks to make a written reply to the objections. The Secretary shall thereupon, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee

shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7 (c) of the Administrative Procedure Act (5 U. S. C., sec. 1006 (c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and by order make public a regulation. Such regulation shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the regulation is based. No such order shall take effect prior to the ninetieth day after its publication, unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

"(e) The Secretary may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Secretary may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such 30-day period a person, who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Secretary shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than 60 days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The 60-day period provided for herein may be extended by the advisory committee for an additional 30 days if the advisory committee deems this necessary. Within 30 days after such certification, the Secretary may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) or subsection (d).

"(f) All data submitted to the Secretary, or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until publication of a regulation under paragraph (2) or (3) of subsection (d) of this section. Until such publication, such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section.

"(g) Whenever the referral of a petition or proposal to an advisory committee is re-

quested under this section, or the Secretary otherwise deems such referral necessary the Secretary shall forthwith appoint a committee of competent experts to review the petition or proposal and to make a report and recommendations thereon. Each such advisory committee shall be composed of experts, qualified in the subject matter of the petition and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

"(h) A person who has filed a petition or who has requested the referral of a proposal to an advisory committee in accordance with the provisions of this section, as well as representatives of the Department of Health, Education, and Welfare, shall have the right to consult with any advisory committee provided for in subsection (g) in connection with the petition or proposal.

"(i) (1) In a case of actual controversy as to the validity of any order under subsection (d) (5), (e), or (1) any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part.

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith served upon the Secretary, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Upon such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee.

"(3) In the case of a petition with respect to an order under subsection (1), a copy of the petition shall be forthwith served upon the Secretary of Agriculture, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Upon such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

"(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, and to be adduced upon the hearing in such manner and upon such terms and conditions as to



the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

"(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The courts shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

"(j) The Secretary may, upon the request of any person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act or upon his own initiative, establish a temporary tolerance for the pesticide chemical for the uses covered by the permit whenever in his judgment such action is deemed necessary to protect the public health, or may temporarily exempt such pesticide chemical from a tolerance. In establishing such a tolerance, the Secretary shall give due regard to the necessity for experimental work in developing an adequate, wholesome, and economical food supply and to the limited hazard to the public health involved in such work when conducted in accordance with applicable regulations under the Federal Insecticide, Fungicide, and Rodenticide Act.

"(k) Regulations affecting pesticide chemicals in or on raw agricultural commodities which are promulgated under the authority of section 406 (a) upon the basis of public hearings instituted before January 1, 1953, in accordance with section 701 (e), shall be deemed to be regulations under this section and shall be subject to amendment or repeal as provided in subsection (m).

"(l) The Secretary of Agriculture, upon request of any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d) (1) with respect to a pesticide chemical which constitutes, or is an ingredient of, such economic poison, shall, within 30 days or within 60 days if, upon notice prior to the termination of such 30 days the Secretary deems it necessary to postpone action for such period, on the basis of data before him, either—

"(1) certify to the Secretary of Health, Education, and Welfare that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

"(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Secretary of Agriculture takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within 1 week after receiving the proposed certification, may either (A) request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Secretary may by order make the certification as proposed. In the event

that the action described in clause (A) or (C) is taken, the Secretary shall by order make the certification as proposed with respect to such parts thereof as are requested. In the event a hearing is requested, the Secretary of Agriculture shall provide opportunity for a prompt hearing. The certification of the Secretary of Agriculture as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Secretary of Agriculture exceed 160 days. The Secretary shall submit to the Secretary of Health, Education, and Welfare with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Secretary of Agriculture, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.

"(m) The Secretary of Health, Education, and Welfare shall prescribe by regulations the procedure by which regulations under this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of regulations establishing tolerances, including the appointment of advisory committees and the procedure for referring petitions to such committees.

"(n) The provisions of section 303 (c) of the Federal Food, Drug, and Cosmetic Act with respect to the furnishing of guaranties shall be applicable to raw agricultural commodities covered by this section."

SEC. 4. There are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose and administration of this act.

SEC. 5. This act shall take effect upon the date of its enactment, except that with respect to pesticide chemicals for which tolerances or exemptions have not been established under section 408 of the Federal Food, Drug, and Cosmetic Act, the amendment to section 402 (a) of such act made by section 2 of this act shall not be effective—

(1) for the period of 1 year following the date of the enactment of this act; or

(2) for such additional period following such period of 1 year, but not extending beyond 2 years after the date of the enactment of this act, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period.

With the following committee amendments:

Page 4, line 10, strike out "(1)" and insert "(1)."

Page 5, line 8, after "from", insert "the requirement of."

Page 6, line 7, strike out "(1)" and insert "(1)."

Page 6, line 9, after "Secretary", insert "of Health, Education, and Welfare."

Page 6, line 20, strike out "event" and insert "events."

Page 6, line 25, strike out "(1)" and insert "(1)."

Page 7, line 2, after "or", insert "in the event"; and, in lines 3 and 4, after "Secretary," insert "of Health, Education, and Welfare."

Page 10, line 1, strike out "person," and insert "person."

Page 11, line 3, strike out "or" and insert "of."

Page 12, line 20, strike out "(1)" and insert "(1)."

Page 13, line 17, strike out "(1)" and insert "(1)."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### EXCHANGE OF UNITED STATES PUBLIC HEALTH QUARANTINE STATION AT MARCUS HOOK, PA.

The Clerk called the bill (H. R. 6421) to authorize the exchange upon terms fully protecting the public interest, of the United States Public Health quarantine station at Marcus Hook, Pa., for a new quarantine station.

The SPEAKER. Is there objection to the present consideration of the bill?

There was no objection.

Mr. CUNNINGHAM. Mr. Speaker, an identical bill has passed the Senate, S. 2405. I ask unanimous consent that this Senate bill be considered in lieu of the House bill.

The SPEAKER. Is there objection to the request of the gentleman from Iowa [Mr. CUNNINGHAM]?

There being no objection, the Clerk read the Senate bill, as follows:

*Be it enacted, etc.,* That, subject to the provisions of section 2 of this act, the Administrator of General Services, with the approval of the Secretary of Health, Education, and Welfare, is hereby authorized, on behalf of the United States, to exchange with the Sun Oil Co., upon such terms and conditions as the Administrator may determine to be in the public interest, the lands and buildings comprising the United States Public Health quarantine station at Marcus Hook, Pa., for a new quarantine station (including land and buildings, a wharf, approaches, roadways, and other improvements incidental thereto, to be constructed in accordance with plans and specifications approved by the Administrator) to be provided by the Sun Oil Co. upon a suitable site in the Philadelphia port area.

SEC. 2. The exchange authorized by the first section of this act shall not be made unless the Administrator of General Services determines (1) that the value to the United States of the property to be conveyed to it is equal to or in excess of the market value of the property to be conveyed by the United States, or (2) that the United States is to receive from the Sun Oil Co., upon conveyance of the properties to be exchanged, a sum of money equal to the amount by which the market value of the property to be conveyed by the United States exceeds the value to the United States of the property to be conveyed to the United States. Any money received by the United States in connection with the exchange shall be covered into the Treasury as a miscellaneous receipt.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H. R. 6421) was laid on the table.

#### FEDERAL LAND BANK PURCHASES OF FEDERAL FARM MORTGAGE CORPORATION ASSETS

The Clerk called the bill (H. R. 6711) to further amend section 13 of the Federal Farm Loan Act, as amended, to authorize the Federal land banks to make a bulk purchase of certain remaining







83<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 7125

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IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 5), 1954

Read twice and referred to the Committee on Labor and Public Welfare

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## AN ACT

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That section 201 of the Federal Food, Drug, and Cosmetic  
4       Act is amended by adding at the end thereof the following  
5       new paragraphs:

6       “(q) The term ‘pesticide chemical’ means any sub-  
7       stance which, alone, in chemical combination or in formu-  
8       lation with one or more other substances, is an ‘economic  
9       poison’ within the meaning of the Federal Insecticide,  
10      Fungicide, and Rodenticide Act (7 U. S. C., secs.

1 135-135k) as now in force or as hereafter amended, and  
2 which is used in the production, storage, or transportation  
3 of raw agricultural commodities.

4 “(r) The term ‘raw agricultural commodity’ means  
5 any food in its raw or natural state, including all fruits that  
6 are washed, colored, or otherwise treated in their unpeeled  
7 natural form prior to marketing.”

8 SEC. 2. Clause (2) of section 402 (a) of the Federal  
9 Food, Drug, and Cosmetic Act is amended to read as follows:  
10 “(2) if it bears or contains any added poisonous or added  
11 deleterious substance, except a pesticide chemical in or on a  
12 raw agricultural commodity, which is unsafe within the  
13 meaning of section 406, or if it is a raw agricultural com-  
14 modity and it bears or contains a pesticide chemical which is  
15 unsafe within the meaning of section 408 (a) ;”.

16 SEC. 3. Chapter IV of the Federal Food, Drug, and Cos-  
17 metic Act is amended by adding at the end thereof the fol-  
18 lowing new section:

19 “TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW  
20 AGRICULTURAL COMMODITIES

21 “SEC. 408. (a) Any poisonous or deleterious pesticide  
22 chemical, or any pesticide chemical which is not generally  
23 recognized, among experts qualified by scientific training and  
24 experience to evaluate the safety of pesticide chemicals, as



1 safe for use, added to a raw agricultural commodity, shall be  
2 deemed unsafe for the purposes of the application of clause  
3 (2) of section 402 (a) unless—

4 “(1) a tolerance for such pesticide chemical in or  
5 on the raw agricultural commodity has been prescribed  
6 by the Secretary of Health, Education, and Welfare  
7 under this section and the quantity of such pesticide  
8 chemical in or on the raw agricultural commodity is  
9 within the limits of the tolerance so prescribed; or

10 “(2) with respect to use in or on such raw agri-  
11 cultural commodity, the pesticide chemical has been  
12 exempted from the requirement of a tolerance by the  
13 Secretary under this section.

14 While a tolerance or exemption from tolerance is in effect  
15 for a pesticide chemical with respect to any raw agricultural  
16 commodity, such raw agricultural commodity shall not, by  
17 reason of bearing or containing any added amount of such  
18 pesticide chemical, be considered to be adulterated within  
19 the meaning of clause (1) of section 402 (a).

20 “(b) The Secretary shall promulgate regulations es-  
21 tablishing tolerances with respect to the use in or on raw  
22 agricultural commodities of poisonous or deleterious pesti-  
23 cide chemicals and of pesticide chemicals which are not gen-  
24 erally recognized, among experts qualified by scientific train-

1 ing and experience to evaluate the safety of pesticide chemi-  
2 cals, as safe for use, to the extent necessary to protect the  
3 public health. In establishing any such regulation, the  
4 Secretary shall give appropriate consideration, among other  
5 relevant factors, (1) to the necessity for the production  
6 of an adequate, wholesome, and economical food supply;  
7 (2) to the other ways in which the consumer may be af-  
8 fected by the same pesticide chemical or by other related  
9 substances that are poisonous or deleterious; and (3) to  
10 the opinion of the Secretary of Agriculture as submitted with  
11 a certification of usefulness under subsection (1) of this  
12 section. Such regulations shall be promulgated in the man-  
13 ner prescribed in subsection (d) or (e) of this section. In  
14 carrying out the provisions of this section relating to the  
15 establishment of tolerances, the Secretary may establish  
16 the tolerance applicable with respect to the use of any  
17 pesticide chemical in or on any raw agricultural commodity  
18 at zero level if the scientific data before the Secretary does  
19 not justify the establishment of a greater tolerance.

20 “(c) The Secretary shall promulgate regulations ex-  
21 empting any pesticide chemical from the necessity of a  
22 tolerance with respect to use in or on any or all raw agricul-  
23 tural commodities when such a tolerance is not necessary to  
24 protect the public health. Such regulations shall be promul-

1 gated in the manner prescribed in subsection (d) or (e)  
2 of this section.

3 “(d) (1) Any person who has registered, or who has  
4 submitted an application for the registration of, an economic  
5 poison under the Federal Insecticide, Fungicide, and Roden-  
6 ticide Act may file with the Secretary of Health, Education,  
7 and Welfare, a petition proposing the issuance of a regulation  
8 establishing a tolerance for a pesticide chemical which consti-  
9 tutes, or is an ingredient of, such economic poison, or  
10 exempting the pesticide chemical from the requirement of  
11 a tolerance. The petition shall contain data showing—

12 “(A) the name, chemical identity, and composition  
13 of the pesticide chemical;

14 “(B) the amount, frequency, and time of application  
15 of the pesticide chemical;

16 “(C) full reports of investigations made with respect  
17 to the safety of the pesticide chemical;

18 “(D) the results of tests on the amount of residue  
19 remaining, including a description of the analytical  
20 methods used;

21 “(E) practicable methods for removing residue  
22 which exceeds any proposed tolerance;

23 “(F) proposed tolerances for the pesticide chemical  
24 if tolerances are proposed; and



1       “(G) reasonable grounds in support of the petition.  
2 Samples of the pesticide chemical shall be furnished to the  
3 Secretary upon request. Notice of the filing of such petition  
4 shall be published in general terms by the Secretary within  
5 thirty days after filing. Such notice shall include the  
6 analytical methods available for the determination of the  
7 residue of the pesticide chemical for which a tolerance or  
8 exemption is proposed.

9       “(2) Within ninety days after a certification of useful-  
10 ness by the Secretary of Agriculture under subsection  
11 (1) with respect to the pesticide chemical named in the peti-  
12 tion, the Secretary of Health, Education, and Welfare shall,  
13 after giving due consideration to the data submitted in the  
14 petition or otherwise before him, by order make public a  
15 regulation—

16               “(A) establishing a tolerance for the pesticide  
17 chemical named in the petition for the purposes for  
18 which it is so certified as useful, or

19               “(B) exempting the pesticide chemical from the  
20 necessity of a tolerance for such purposes,  
21 unless within such ninety-day period the person filing the  
22 petition requests that the petition be referred to an advisory  
23 committee or the Secretary within such period otherwise  
24 deems such referral necessary, in either of which events

1 the provisions of paragraph (3) of this subsection shall apply  
2 in lieu hereof.

3 “(3) In the event that the person filing the petition  
4 requests, within ninety days after a certification of useful-  
5 ness by the Secretary of Agriculture under subsection (1)  
6 with respect to the pesticide chemical named in the peti-  
7 tion, that the petition be referred to an advisory committee,  
8 or in the event the Secretary of Health, Education, and Wel-  
9 fare within such period otherwise deems such referral nec-  
10 essary, the Secretary of Health, Education, and Welfare  
11 shall forthwith submit the petition and other data  
12 before him to an advisory committee to be appointed  
13 in accordance with subsection (g) of this section. As  
14 soon as practicable after such referral, but not later than  
15 sixty days thereafter, unless extended as hereinafter provided,  
16 the committee shall, after independent study of the data  
17 submitted to it by the Secretary and other data before it,  
18 certify to the Secretary a report and recommendations on the  
19 proposal in the petition to the Secretary, together with all  
20 underlying data and a statement of the reasons or basis for  
21 the recommendations. The sixty-day period provided for  
22 herein may be extended by the advisory committee for an  
23 additional thirty days if the advisory committee deems this  
24 necessary. Within thirty days after such certification, the

1 Secretary shall, after giving due consideration to all data  
2 then before him, including such report, recommendations,  
3 underlying data, and statement, by order make public a  
4 regulation—

5 “(A) establishing a tolerance for the pesticide  
6 chemical named in the petition for the purposes for  
7 which it is so certified as useful; or

8 “(B) exempting the pesticide chemical from the  
9 necessity of a tolerance for such purposes.

10 “(4) The regulations published under paragraph (2)  
11 or (3) of this subsection will be effective upon publication.

12 “(5) Within thirty days after publication, any person  
13 adversely affected by a regulation published pursuant to  
14 paragraph (2) or (3) of this subsection, or pursuant to  
15 subsection (e), may file objections thereto with the Secre-  
16 tary, specifying with particularity the provisions of the  
17 regulation deemed objectionable, stating reasonable grounds  
18 therefor, and requesting a public hearing upon such objec-  
19 tions. A copy of the objections filed by a person other than  
20 the petitioner shall be served on the petitioner, if the regu-  
21 lation was issued pursuant to a petition. The petitioner shall  
22 have two weeks to make a written reply to the objections.  
23 The Secretary shall thereupon, after due notice, hold such  
24 public hearing for the purpose of receiving evidence relevant  
25 and material to the issues raised by such objections. Any



1 report, recommendations, underlying data, and reasons certi-  
2 fied to the Secretary by an advisory committee shall be made  
3 a part of the record of the hearing, if relevant and material,  
4 subject to the provisions of section 7 (c) of the Adminis-  
5 trative Procedure Act (5 U. S. C., sec. 1006 (c)). The  
6 National Academy of Sciences shall designate a member of  
7 the advisory committee to appear and testify at any such  
8 hearing with respect to the report and recommendations of  
9 such committee upon request of the Secretary, the petitioner,  
10 or the officer conducting the hearing: *Provided*, That this  
11 shall not preclude any other member of the advisory com-  
12 mittee from appearing and testifying at such hearing. As  
13 soon as practicable after completion of the hearing, the  
14 Secretary shall act upon such objections and by order make  
15 public a regulation. Such regulation shall be based only on  
16 substantial evidence of record at such hearing, including any  
17 report, recommendations, underlying data, and reasons cer-  
18 tified to the Secretary by an advisory committee, and shall  
19 set forth detailed findings of fact upon which the regulation  
20 is based. No such order shall take effect prior to the nine-  
21 tieth day after its publication, unless the Secretary finds that  
22 emergency conditions exist necessitating an earlier effective  
23 date, in which event the Secretary shall specify in the order  
24 his findings as to such conditions.

1       “(e) The Secretary may at any time, upon his own  
2 initiative or upon the request of any interested person, pro-  
3 pose the issuance of a regulation establishing a tolerance for  
4 a pesticide chemical or exempting it from the necessity of  
5 a tolerance. Thirty days after publication of such a pro-  
6 posal, the Secretary may by order publish a regulation based  
7 upon the proposal which shall become effective upon publi-  
8 cation unless within such thirty-day period a person  
9 who has registered, or who has submitted an application for the  
10 registration of, an economic poison under the Federal In-  
11 secticide, Fungicide, and Rodenticide Act containing the  
12 pesticide chemical named in the proposal, requests that  
13 the proposal be referred to an advisory committee. In the  
14 event of such a request, the Secretary shall forthwith sub-  
15 mit the proposal and other relevant data before him to an  
16 advisory committee to be appointed in accordance with  
17 subsection (g) of this section. As soon as practicable after  
18 such referral, but not later than sixty days thereafter, unless  
19 extended as hereinafter provided, the committee shall, after  
20 independent study of the data submitted to it by the Secre-  
21 tary and other data before it, certify to the Secretary a  
22 report and recommendations on the proposal together with  
23 all underlying data and a statement of the reasons or basis  
24 for the recommendations. The sixty-day period provided for  
25 herein may be extended by the advisory committee for

1 an additional thirty days if the advisory committee deems  
2 this necessary. Within thirty days after such certification,  
3 the Secretary may, after giving due consideration to all  
4 data before him, including such report, recommendations,  
5 underlying data and statement, by order publish a regulation  
6 establishing a tolerance for the pesticide chemical named  
7 in the proposal or exempting it from the necessity of a toler-  
8 ance which shall become effective upon publication. Regu-  
9 lations issued under this subsection shall upon publication be  
10 subject to paragraph (5) of subsection (d).

11 “(f) All data submitted to the Secretary or to an  
12 advisory committee in support of a petition under this section  
13 shall be considered confidential by the Secretary and by  
14 such advisory committee until publication of a regulation  
15 under paragraph (2) or (3) of subsection (d) of this  
16 section. Until such publication, such data shall not be  
17 revealed to any person other than those authorized by the  
18 Secretary or by an advisory committee in the carrying out  
19 of their official duties under this section.

20 “(g) Whenever the referral of a petition or proposal  
21 to an advisory committee is requested under this section, or  
22 the Secretary otherwise deems such referral necessary the  
23 Secretary shall forthwith appoint a committee of competent  
24 experts to review the petition or proposal and to make a  
25 report and recommendations thereon. Each such advisory



1 committee shall be composed of experts, qualified in the  
2 subject matter of the petition and of adequately diversified  
3 professional background selected by the National Academy  
4 of Sciences and shall include one or more representatives  
5 from land-grant colleges. The size of the committee shall  
6 be determined by the Secretary. Members of an advisory  
7 committee shall receive as compensation for their services  
8 a reasonable per diem, which the Secretary shall by rules  
9 and regulations prescribe, for time actually spent in the  
10 work of the committee, and shall in addition be reimbursed  
11 for their necessary traveling and subsistence expenses while  
12 so serving away from their places of residence. The mem-  
13 bers shall not be subject to any other provisions of law  
14 regarding the appointment and compensation of employees  
15 of the United States. The Secretary shall furnish the com-  
16 mittee with adequate clerical and other assistance, and shall  
17 by rules and regulations prescribe the procedure to be  
18 followed by the committee.

19 “(h) A person who has filed a petition or who has  
20 requested the referral of a proposal to an advisory committee  
21 in accordance with the provisions of this section, as well  
22 as representatives of the Department of Health, Education,  
23 and Welfare, shall have the right to consult with any  
24 advisory committee provided for in subsection (g) in con-  
25 nection with the petition or proposal.

1       “(i) (1) In a case of actual controversy as to the  
2 validity of any order under subsection (d) (5), (e), or  
3 (1) any person who will be adversely affected by such order  
4 may obtain judicial review by filing in the United States Court  
5 of Appeals for the circuit wherein such person resides or  
6 has his principal place of business, or in the United States  
7 Court of Appeals for the District of Columbia Circuit, within  
8 sixty days after the entry of such order, a petition praying  
9 that the order be set aside in whole or in part.

10       “(2) In the case of a petition with respect to an order  
11 under subsection (d) (5) or (e), a copy of the petition  
12 shall be forthwith served upon the Secretary, or upon any  
13 officer designated by him for that purpose, and thereupon  
14 the Secretary shall certify and file in the court a transcript  
15 of the proceedings and the record on which he based his  
16 order. Upon such filing, the court shall have exclusive juris-  
17 diction to affirm or set aside the order complained of in  
18 whole or in part. The findings of the Secretary with re-  
19 spect to questions of fact shall be sustained if supported by  
20 substantial evidence when considered on the record as a  
21 whole, including any report and recommendation of an  
22 advisory committee.

23       “(3) In the case of a petition with respect to an order  
24 under subsection (1), a copy of the petition shall be forth-  
25 with served upon the Secretary of Agriculture, or upon any

1 officer designated by him for that purpose, and thereupon the  
2 Secretary shall certify and file in the court a transcript of  
3 the proceedings and the record on which he based his order.  
4 Upon such filing, the court shall have exclusive jurisdiction  
5 to affirm or set aside the order complained of in whole or in  
6 part. The findings of the Secretary with respect to ques-  
7 tions of fact shall be sustained if supported by substantial  
8 evidence when considered on the record as a whole.

9 “(4) If application is made to the court for leave to  
10 adduce additional evidence, the court may order such addi-  
11 tional evidence to be taken before the Secretary of Health,  
12 Education, and Welfare or the Secretary of Agriculture, as  
13 the case may be, and to be adduced upon the hearing in such  
14 manner and upon such terms and conditions as to the court  
15 may seem proper, if such evidence is material and there were  
16 reasonable grounds for failure to adduce such evidence in the  
17 proceedings below. The Secretary of Health, Education,  
18 and Welfare or the Secretary of Agriculture, as the case may  
19 be, may modify his findings as to the facts and order by  
20 reason of the additional evidence so taken, and shall file with  
21 the court such modified findings and order.

22 “(5) The judgment of the court affirming or setting  
23 aside, in whole or in part, any order under this section  
24 shall be final, subject to review by the Supreme Court of  
25 the United States upon certiorari or certification as pro-



1 vided in section 1254 of title 28 of the United States  
2 Code. The commencement of proceedings under this sec-  
3 tion shall not, unless specifically ordered by the court to  
4 the contrary, operate as a stay of an order. The courts  
5 shall advance on the docket and expedite the disposition  
6 of all causes filed therein pursuant to this section.

7 “(j) The Secretary may, upon the request of any  
8 person who has obtained an experimental permit for a  
9 pesticide chemical under the Federal Insecticide, Fungi-  
10 cide, and Rodenticide Act or upon his own initiative, es-  
11 tablish a temporary tolerance for the pesticide chemical  
12 for the uses covered by the permit whenever in his judg-  
13 ment such action is deemed necessary to protect the public  
14 health, or may temporarily exempt such pesticide chemical  
15 from a tolerance. In establishing such a tolerance, the Sec-  
16 retary shall give due regard to the necessity for experi-  
17 mental work in developing an adequate, wholesome, and  
18 economical food supply and to the limited hazard to the  
19 public health involved in such work when conducted in  
20 accordance with applicable regulations under the Federal  
21 Insecticide, Fungicide, and Rodenticide Act.

22 “(k) Regulations affecting pesticide chemicals in or on  
23 raw agricultural commodities which are promulgated under  
24 the authority of section 406 (a) upon the basis of public  
25 hearings instituted before January 1, 1953, in accordance

1 with section 701 (e), shall be deemed to be regulations  
2 under this section and shall be subject to amendment or  
3 repeal as provided in subsection (m).

4 “(1) The Secretary of Agriculture, upon request of any  
5 person who has registered, or who has submitted an appli-  
6 cation for the registration of, an economic poison under the  
7 Federal Insecticide, Fungicide, and Rodenticide Act, and  
8 whose request is accompanied by a copy of a petition filed  
9 by such person under subsection (d) (1) with respect to  
10 a pesticide chemical which constitutes, or is an ingredient  
11 of, such economic poison, shall, within thirty days or within  
12 sixty days if upon notice prior to the termination of such  
13 thirty days the Secretary deems it necessary to postpone  
14 action for such period, on the basis of data before him,  
15 either—

16 “(1) certify to the Secretary of Health, Education,  
17 and Welfare that such pesticide chemical is useful for  
18 the purpose for which a tolerance or exemption is  
19 sought; or

20 “(2) notify the person requesting the certification  
21 of his proposal to certify that the pesticide chemical  
22 does not appear to be useful for the purpose for which  
23 a tolerance or exemption is sought, or appears to be  
24 useful for only some of the purposes for which a toler-  
25 ance or exemption is sought.

1 In the event that the Secretary of Agriculture takes the  
2 action described in clause (2) of the preceding sentence,  
3 the person requesting the certification, within one week  
4 after receiving the proposed certification, may either (A)  
5 request the Secretary of Agriculture to certify to the Secre-  
6 tary of Health, Education, and Welfare on the basis of the  
7 proposed certification; (B) request a hearing on the pro-  
8 posed certification or the parts thereof objected to; or (C)  
9 request both such certification and such hearing. If no such  
10 action is taken, the Secretary may by order make the  
11 certification as proposed. In the event that the action de-  
12 scribed in clause (A) or (C) is taken, the Secretary shall  
13 by order make the certification as proposed with respect to  
14 such parts thereof as are requested. In the event a hearing  
15 is requested, the Secretary of Agriculture shall provide  
16 opportunity for a prompt hearing. The certification of the  
17 Secretary of Agriculture as the result of such hearing shall  
18 be made by order and shall be based only on substantial  
19 evidence of record at the hearing and shall set forth detailed  
20 findings of fact. In no event shall the time elapsing between  
21 the making of a request for a certification under this sub-  
22 section and final certification by the Secretary of Agriculture  
23 exceed one hundred and sixty days. The Secretary shall  
24 submit to the Secretary of Health, Education, and Welfare  
25 with any certification of usefulness under this subsection



1 an opinion, based on the data before him, whether the tol-  
2 erance or exemption proposed by the petitioner reasonably  
3 reflects the amount of residue likely to result when the pesti-  
4 cide chemical is used in the manner proposed for the purpose  
5 for which the certification is made. The Secretary of Agricul-  
6 ture, after due notice and opportunity for public hearing,  
7 is authorized to promulgate rules and regulations for carrying  
8 out the provisions of this subsection.

9 “(m) The Secretary of Health, Education, and Welfare  
10 shall prescribe by regulations the procedure by which regu-  
11 lations under this section may be amended or repealed, and  
12 such procedure shall conform to the procedure provided in  
13 this section for the promulgation of regulations establishing  
14 tolerances, including the appointment of advisory committees  
15 and the procedure for referring petitions to such committees.

16 “(n) The provisions of section 303 (c) of the Federal  
17 Food, Drug, and Cosmetic Act with respect to the furnish-  
18 ing of guaranties shall be applicable to raw agricultural com-  
19 modities covered by this section.”

20 SEC. 4. There are hereby authorized to be appropriated,  
21 out of any moneys in the Treasury not otherwise appro-  
22 priated, such sums as may be necessary for the purpose and  
23 administration of this Act.

24 SEC. 5. This Act shall take effect upon the date of its  
25 enactment, except that with respect to pesticide chemicals

1 for which tolerances or exemptions have not been established  
2 under section 408 of the Federal Food, Drug, and Cosmetic  
3 Act, the amendment to section 402 (a) of such Act made  
4 by section 2 of this Act shall not be effective—

5 (1) for the period of one year following the date  
6 of the enactment of this Act; or

7 (2) for such additional period following such period  
8 of one year, but not extending beyond two years after  
9 the date of the enactment of this Act, as the Secretary  
10 of Health, Education, and Welfare may prescribe on the  
11 basis of a finding that conditions exist which necessitate  
12 the prescribing of such additional period.

Passed the House of Representatives April 5, 1954.

Attest:

LYLE O. SNADER,

*Clerk.*

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## AN ACT

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To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticides chemicals in or on raw agricultural commodities.

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APRIL 6 (legislative day, APRIL 5), 1954

Read twice and referred to the Committee on Labor  
and Public Welfare







83<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 9166

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IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1954

Mr. O'HARA of Minnesota (by request) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

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## A BILL

To protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of new chemical additives which have not been adequately tested to establish their safety.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That section 201 of the Federal Food, Drug, and Cosmetic  
4       Act is amended by adding at the end thereof the following  
5       new paragraph:

6       “(s) The term ‘new chemical additive’ means any sub-  
7       stance the intended use of which results or is likely to result  
8       in its becoming a component of any food, including sub-  
9       stances intended to preserve or alter the food or for any



1 other purpose in manufacturing, producing, processing,  
2 packing, wrapping, transporting, or holding the food, which  
3 is not generally recognized, among experts qualified by  
4 scientific training and experience to evaluate the toxicity or  
5 other potentiality for harm of such substances, as having  
6 been adequately shown through scientific procedures or  
7 through prolonged use in food not to be a poisonous or dele-  
8 terious substance for its intended use. The term does  
9 not include pesticide chemicals in or on raw agricultural  
10 commodities.”

11 SEC. 2. Clause (2) of section 402 (a) of the Federal  
12 Food, Drug, and Cosmetic Act is amended to read as follows:

13 “(2) (A) If it bears or contains any added poison-  
14 ous or added deleterious substance, except a pesticide  
15 chemical in or on a raw agricultural commodity, which  
16 is unsafe within the meaning of section 406; or (B) if  
17 it is a raw agricultural commodity and it bears or  
18 contains a pesticide chemical which is unsafe within the  
19 meaning of section 408 (a) ; or (C) if it is or if it bears  
20 or contains any new chemical additive which is unsafe  
21 within the meaning of section 409 (a) ;”.

22 SEC. 3. Chapter IV of the Federal Food, Drug, and  
23 Cosmetic Act is amended by adding at the end thereof the  
24 following new section:

“NEW CHEMICAL ADDITIVES

“SEC. 409. (a) UNSAFE CHEMICAL ADDITIVES.—Any new chemical additive shall be deemed unsafe for the purposes of the application of clause (2) (C) of section 402 (a) unless a regulation has been issued by the Secretary pursuant to paragraph (c) of this section announcing that the new chemical additive is not a poisonous or deleterious substance for its intended use.

“(b) APPLICATION TO SHOW SAFETY.—Any interested person shall have the right to file with the Secretary an application containing scientific data for the purpose of establishing that a new chemical additive is not a poisonous or deleterious substance for its intended use. The application shall contain data showing—

“(A) the name, chemical identity, and composition of the new chemical additive;

“(B) the proposed use of the new chemical additive together with functional use information;

“(C) a full description of the methods used in, and the facilities and controls used for, the production of the new chemical additive;

“(D) a description of the methods for quantitative determination of the new chemical additive, and its reduction products, in or on food;

1           “(E) all directions, recommendations, and sugges-  
2           tions proposed for the use of the new chemical additive,  
3           including specimens of its proposed labeling;

4           “(F) full reports of investigations made with re-  
5           spect to the toxicity or other potentiality for harm of  
6           the new chemical additive;

7           “(G) a proposed regulation announcing that the  
8           new chemical additive is not a poisonous or deleterious  
9           substance for its intended use; and

10          “(H) reasonable grounds in support of the appli-  
11          cation. Samples of the new chemical additive and of  
12          articles used as components thereof shall be furnished to  
13          the Secretary upon request. Notice of the proposed regu-  
14          lation shall be published in general terms by the Secre-  
15          tary within thirty days after filing.

16          “(c) ACTION ON APPLICATION.—As soon as practicable  
17          after the filing of the application, and in no event more  
18          than one hundred and twenty days thereafter, the Secre-  
19          tary shall issue a regulation announcing that the new  
20          chemical additive is not a poisonous or deleterious substance  
21          for its intended use or shall notify the applicant that no such  
22          regulation will be issued: *Provided, however,* That within the  
23          one-hundred-and-twenty-day period the applicant may  
24          require that the application be referred to an advisory com-  
25          mittee or the Secretary may make such a referral, in either of



1 which case the matter shall await the action of the advisory  
2 committee. No such regulation shall issue unless the scien-  
3 tific data submitted establish that the new chemical additive  
4 is not a poisonous or deleterious substance for its intended use.

5 “The Secretary shall, in determining whether the pro-  
6 posed ingredient is a poisonous or deleterious substance for  
7 its intended use, consider among other relevant factors—

8 “(1) the functional value of the proposed additive  
9 for its intended use;

10 “(2) the probable consumption of the new chemi-  
11 cal additive and any food in which it is intended to be  
12 used as a component;

13 “(3) the cumulative effect in the diet of the same  
14 or any chemically or pharmacologically related sub-  
15 stance or substances; and

16 “(4) Appropriate safety factors for transposing  
17 animal experimentation data to practical use in ap-  
18 praising the hazard to man.

19 “(d) REFERENCE TO ADVISORY COMMITTEE.—In  
20 the event the person filing the application requires that the  
21 application be referred to an advisory committee, or the  
22 Secretary deems such referral necessary, the Secretary shall  
23 forthwith submit the application and other data before him  
24 to an advisory committee to be appointed in accordance with

1 paragraph (f) of this section. Within sixty days after  
2 such referral, or within an additional thirty days if the com-  
3 mittee deems such additional time necessary, the committee  
4 shall, after independent study of the data submitted to it by  
5 the Secretary and other data before it, certify to the Secre-  
6 tary a report and recommendations on the proposal in the  
7 application, together with all underlying data and a statement  
8 of the reasons or basis for the recommendations. Within  
9 thirty days after such certification, the Secretary shall, after  
10 giving due consideration to all data then before him, in-  
11 cluding such report, recommendations, underlying data, and  
12 statement, make public a regulation announcing whether the  
13 scientific data establish that the new chemical additive is not  
14 a poisonous or deleterious substance for its intended use and  
15 the reasons for his action. Such regulation will be effective  
16 upon publication.

17     “(e) OBJECTION TO REGULATIONS; PUBLIC HEARING  
18 ON OBJECTIONS: FINAL ORDER.—Within thirty days after  
19 publication, any person adversely affected by a regulation  
20 published pursuant to paragraph (d) of this section may file  
21 objections thereto with the Secretary, specifying with par-  
22 ticularity the reasons the regulation is deemed objectionable,  
23 and requesting a public hearing upon such objections. The  
24 Secretary shall thereupon, after due notice, hold such public  
25 hearing for the purpose of receiving evidence relevant and

1 material to the issues raised by such objections. Any report,  
2 recommendations, underlying data, and reasons certified to  
3 the Secretary by an advisory committee shall be made a part  
4 of the record of the hearing, if relevant and material, subject  
5 to the provisions of section 7 (c) of the Administrative  
6 Procedure Act (5 U. S. C., sec. 1006 (c)). The advisory  
7 committee shall designate one of its members to appear and  
8 testify at any such hearing with respect to the report and  
9 recommendations of such committee upon request of the  
10 Secretary, the applicant, or the officer conducting the hear-  
11 ing: *Provided*, That this shall not preclude any other mem-  
12 ber of the advisory committee from appearing and testifying  
13 at such hearing. As soon as practicable after completion of  
14 the hearing, the Secretary shall act upon such objections and  
15 by order make public a regulation. Such regulation shall  
16 be based only on substantial evidence of record at such hear-  
17 ing, including any report, recommendations, underlying data,  
18 and reasons certified to the Secretary by an advisory com-  
19 mittee, and shall set forth detailed findings of fact upon  
20 which the regulation is based. No such order shall take  
21 effect prior to the ninetieth day after its publication, unless  
22 the Secretary finds that emergency conditions exist necessi-  
23 tating an earlier effective date, in which event the Secretary  
24 shall specify in the order his findings as to such conditions.

25 “(f) APPOINTMENT OF ADVISORY COMMITTEE.—



1 Whenever the referral of an application to an advisory com-  
2 mittee is required under this section, or the Secretary other-  
3 wise deems such referral necessary, the Secretary shall forth-  
4 with appoint a committee of competent experts to review the  
5 application and to make a report and recommendations  
6 thereon. Each such advisory committee shall be composed of  
7 experts qualified in the subject matter of the application and  
8 of adequately diversified professional background selected by  
9 the National Academy of Sciences: *Provided*, That in the  
10 event of disability or refusal of the National Academy of  
11 Sciences to act, the Secretary shall select such a committee.  
12 The size of the committee shall be determined by the Sec-  
13 retary. Members of an advisory committee shall receive as  
14 compensation for their services a reasonable per diem, which  
15 the Secretary shall by rules and regulations prescribe, for time  
16 actually spent in the work of the committee, and shall in  
17 addition be reimbursed for their necessary traveling and sub-  
18 sistence expenses while so serving away from their places of  
19 residence. The members shall not be subject to any other  
20 provisions of law regarding the appointment and compensa-  
21 tion of employees of the United States. The Secretary shall  
22 furnish the committee with adequate clerical and other  
23 assistance.

24 “(g) RIGHT TO CONSULT ADVISORY COMMITTEE.—  
25 A person who has filed an application or who has required

1 the referral of an application to an advisory committee in  
2 accordance with the provisions of this section, as well as  
3 representatives of the Department of Health, Education, and  
4 Welfare, shall have the right to consult with any advisory  
5 committee provided for in paragraph (f) of this section in  
6 connection with the proposal.

7 “(h) JUDICIAL REVIEW.—(1) In a case of actual  
8 controversy as to the validity of any order under paragraph  
9 (e) of this section, any person who will be adversely af-  
10 fected by such order may obtain judicial review by filing  
11 in the United States Court of Appeals for the circuit wherein  
12 such person resides or has his principal place of business  
13 within sixty days after the entry of such order, a petition  
14 praying that the order be set aside in whole or in part.

15 “(2) A copy of the petition shall be forthwith served  
16 upon the Secretary, or upon any officer designated by him  
17 for that purpose, and thereupon the Secretary shall certify  
18 and file in the court a transcript of the proceedings and  
19 the record on which he based his order, or such parts of  
20 such record and proceedings as may be required by court  
21 rule. Upon such filing, the court shall have exclusive juris-  
22 diction to affirm or set aside the order complained of in  
23 whole or in part. The findings of the Secretary with respect  
24 to questions of fact shall be sustained if supported by sub-  
25 stantial evidence when considered on the record as a whole,

1 including any report and recommendation of an advisory  
2 committee.

3 “(3) If application is made to the court for leave to  
4 adduce additional evidence, the court may order such ad-  
5 ditional evidence to be taken before the Secretary and to be  
6 adduced upon the hearing in such manner and upon such  
7 terms and conditions as to the court may seem proper, if  
8 such evidence is material and there were reasonable grounds  
9 for failure to adduce such evidence in the proceedings below.  
10 The Secretary may modify his findings as to the facts and  
11 order by reason of the additional evidence so taken, and shall  
12 file with the court such modified findings and order.

13 “(4) The judgment of the court affirming or setting  
14 aside, in whole or in part, any order under paragraph (e)  
15 of this section shall be final, subject to review by the Su-  
16 preme Court of the United States upon certiorari or certifi-  
17 cation as provided in section 1254 of title 28 of the United  
18 States Code. The commencement of proceedings under this  
19 section shall not, unless specifically ordered by the court to  
20 the contrary, operate as a stay of an order. The courts shall  
21 advance on the docket and expedite the disposition of all  
22 causes filed therein pursuant to this section.

23 “(i) AMENDMENT AND REPEAL OF REGULATIONS.—  
24 The Secretary shall prescribe by regulations the procedure  
25 by which regulations under this section may be amended or



1 repealed, and such procedure shall conform to the procedure  
2 provided in this section for the promulgation of regulations,  
3 including the appointment of advisory committees and the  
4 procedure for referring applications to such committees.”

5 SEC. 4. There are hereby authorized to be appropriated,  
6 out of any moneys in the Treasury not otherwise appro-  
7 priated, such sums as may be necessary for the purpose and  
8 administration of this Act.

9 EFFECTIVE DATE

10 SEC. 5. This Act shall take effect upon the date of its  
11 enactment.

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# A BILL

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To protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of new chemical additives which have not been adequately tested to establish their safety.

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By Mr. O'HARA of Minnesota

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MAY 17, 1954

Referred to the Committee on Interstate and Foreign  
Commerce







# Daily Digest

## HIGHLIGHTS

By 71 to 3, Senate passed bill on reciprocal trade extension.

House adopted conference report on Defense appropriations and cleared stop-gap housing extension for the President.

Senate Agriculture Committee voted to extend mandatory 90 percent of parity price supports for basic crops for 1 year.

Foreign-aid bill cleared for House debate by Rules Committee.

## Senate

### Chamber Action

*Routine Proceedings, pages 8332-8345*

**Bills Introduced:** 6 bills and 1 resolution were introduced, as follows: S. 3658 to S. 3663; and S. J. Res. 169.

Page 8333

**Bills Referred:** Three House-passed bills were referred to appropriate committees.

Page 8335

**Virgin Islands:** Senate disagreed to House amendment to S. 3378, to revise the Organic Act of the Virgin Islands, asked for a conference with the House, and appointed Senators Butler (Nebraska), Cordon, Watkins, Jackson, and Long as conferees.

Pages 8335-8340

**Reciprocal Trade:** By 71 yeas to 3 nays, Senate passed H. R. 9474, to extend to June 12, 1955, authority of the President to enter into reciprocal trade agreements, after adopting 1 amendment and rejecting 3 amendments, as follows:

Adopted: Amendment by Senator Johnson of Colorado (for Senator Symington), barring decrease in duty on any article, the domestic production of which would be threatened by such decrease; and

Rejected: By 32 yeas to 45 nays, Gore amendment (in the nature of a substitute for the bill and which would have extended present law for 3 years rather than 1); by 23 yeas to 52 nays, Mundt amendment, providing that if investigation by Tariff Commission indicates that importation of any articles will materially interfere with farm parity price program, President shall impose up to 50-percent fees on such articles; and Malone amendment to establish a Strategic and Critical Minerals and Materials Authority.

Motion to reconsider vote by which bill passed was tabled.

Pages 8345-8378, 8381-8416

**Labor-HEW Appropriations:** Senate proceeded to consideration of H. R. 9447, Labor and Health, Educa-

tion, and Welfare Departments' appropriations for fiscal year 1955.

Page 8416

**Nominations:** The nominations of Sheldon T. Mills, of Oregon, to be Ambassador to Ecuador, and of Lewis G. Castle, of Minnesota, to be Administrator of the St. Lawrence Seaway Development Corporation, were received, along with one postmaster withdrawal.

Page 8426

**Program for Friday:** Senate recessed at 8:06 p. m. until noon Friday, June 25, when it will consider H. R. 9447, Labor-HEW appropriations for 1955, to be followed by conference report on H. R. 8873, Defense appropriations for 1955; H. R. 303, transfer operations of hospitals for Indians to PHS; S. 3385, more effective extension work among Indian tribes; S. 2759, improvement of vocational rehabilitation services; S. Con. Res. 91, expressing sense of Congress on interference by Soviet Communists in Western Hemisphere, and possibly action toward ratification of Universal Copyright Convention of 1952, and three related protocols.

### Committee Meetings

(Committees not listed did not meet)

#### GENERAL FARM PROGRAM

**Committee on Agriculture and Forestry:** Committee continued its executive consideration of S. 3052, to encourage a stable, prosperous, and free agriculture, following which it announced the following actions:

(1) By a vote of 8 to 7, agreed to extend mandatory 90 percent of parity price supports for the basic crops for 1 more year;

(2) Agreed to retain mandatory price supports for tung nuts and honey between 60 and 90 percent of parity; and

(3) Agreed to introduce a separate bill to extend the authority of the Secretary of Agriculture to make agricultural conservation payments on a national basis.



The committee defeated, by a vote of 9 nays to 6 yeas, a motion to extend mandatory 90 percent of parity price supports for the basic crops for 2 years.

Committee recessed subject to call.

#### APPROPRIATIONS—LEGISLATIVE-JUDICIARY

*Committee on Appropriations:* Subcommittee concluded its hearings (today in executive session) on H. R. 9203, legislative and judiciary appropriations for fiscal 1955.

Subcommittee will meet in executive session tomorrow to mark up the bill.

#### HISTORICAL SHIPS

*Committee on Armed Services:* Committee held hearings on H. R. 8247, providing for the restoration and maintenance of the U. S. S. *Constitution*, and authorizing the disposition of the U. S. S. *Constellation*, *Hartford*, *Olympia*, and *Oregon*. Testimony was heard on this proposed legislation from the following witnesses: Senators Butler (Maryland), Beall, Sparkman, and Martin; Representatives Small, Friedel, Miller (Maryland), and Boykin; Edward J. Higgins, administrative assistant to Senator Green; Neil Swanson, chairman of the Constellation Commission, Maryland; Miles D. Kennedy, American Legion, Washington, D. C.; James B. Donaghey and James F. Kehoe, Knights of Columbus, Mobile; Alphonse Lucas, American Legion, Mobile; and Rear Adm. B. E. Manseau, Deputy and Assistant Chief, Bureau of Ships, Navy Department. Committee recessed subject to call.

#### SOCIAL SECURITY

*Committee on Finance:* Committee began hearings on H. R. 9366, providing for expanded coverage and an improved old-age and survivors insurance program, with testimony today from HEW Secretary Oveta Culp Hobby. Mrs. Hobby supported the provisions of the bill, stating that it substantially carries out the President's recommendations as they affect old-age and survivors insurance, and as they affect some aspects of the interrelationship of the old-age and survivors insurance and the public assistance programs.

Hearings continue Monday, June 28.

#### CALIFORNIA INDIAN ATTORNEYS' FEES

*Committee on Interior and Insular Affairs:* Subcommittee on Indian Affairs held hearings with regard to fees of attorneys representing California Indians. Witnesses heard today were Sam Clammer and Robert W. Barker, both D. C. attorneys representing certain California Indian groups; and W. Barton Greenwood, Assistant

Commissioner, and Harvey A. Sellery, Jr., Chief Counsel, both of the Bureau of Indian Affairs, Department of Interior. Subcommittee adjourned subject to call.

#### NOMINATION—FCC

*Committee on Interstate and Foreign Commerce:* Committee concluded its open hearings on the nomination of John C. Doerfer, of Wisconsin, to be a member of the FCC (reappointment), with testimony today in his own behalf from the nominee. Testimony was also heard with regard to this nomination from Benito Gaguine, of Washington, D. C.

Committee will consider this nomination in executive session on Monday, June 28.

#### LIQUOR ADVERTISING

*Committee on Interstate and Foreign Commerce:* Subcommittee on Business and Consumer Interests concluded hearings on S. 3294, to prohibit the transportation in interstate commerce of advertising of alcoholic beverages, after receiving testimony in opposition to enactment of the bill from the following witnesses: William L. Daley, National Editorial Association, Chicago; Peyton R. Evans, Washington Publishers Association, Washington, D. C.; C. L. Chapin, Repeal Associates, Inc., Washington, D. C.; Abraham Tunick, Wine and Spirits Wholesalers of America, Washington, D. C.; John E. O'Neill, Brewers' Association of America, Washington, D. C.; Edward W. Wootton, wine advisory board, Department of Agriculture of California; Ralph W. Hardy, National Association of Radio and TV Broadcasters, Washington, D. C.; George Link, Jr., American Association of Advertising Agencies, New York; Patrick Cavanaugh, National Licensed Beverage Association, Washington, D. C.; Randolph W. Childs, Pennsylvania Alcoholic Beverage Study, Inc., Philadelphia; C. Frank Jobson, publisher, Conover-Mast Publications, New York; and Arthur J. Packard, American Hotel Association, New York (filed a statement).

#### PESTICIDES

*Committee on Labor and Public Welfare:* Committee, in executive session, ordered favorably reported with an amendment H. R. 7125, to amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

The committee also considered, but took no action on, bills on Federal aid to school construction and on health reinsurance. The committee will meet again on Thursday, July 1.







## AMENDING THE FEDERAL FOOD, DRUG, AND COSMETIC ACT WITH RESPECT TO RESIDUES OF PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

JUNE 25 (legislative day, JUNE 22), 1954.—Ordered to be printed

Mr. PURTELL, from the Committee on Labor and Public Welfare,  
submitted the following

### REPORT

[To accompany H. R. 7125]

The Committee on Labor and Public Welfare, to whom was referred the bill (H. R. 7125) to amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On page 18, line 20, immediately preceding section 4, add a new subsection (o) as follows:

(o) The Secretary of Health, Education, and Welfare shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Secretary, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Secretary's functions under this section. Under such regulations, the performance of the Secretary's services or other functions pursuant to this section, including any one or more of the following, may be conditioned upon the payment of such fees: (1) the acceptance of filing of a petition submitted under subsection (d); (2) the promulgation of a regulation establishing a tolerance, or an exemption from the necessity of a tolerance, under this section, or the amendment or repeal of such a regulation; (3) the referral of a petition or proposal under this section to an advisory committee; (4) the acceptance for filing of objections under subsection (d) (5); or (5) the certification and filing in court of a transcript of the proceedings and the record under subsection (i) (2). Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Secretary such waiver or refund is equitable and not contrary to the purposes of this subsection.

#### PURPOSE OF THE BILL

The primary purpose of the bill is to assure greater protection of the public health by improving, simplifying, and speeding up the procedure under the Federal Food, Drug, and Cosmetic Act, for



regulating the amount of residue which may remain on raw agricultural commodities after use of pesticide chemicals.

Pesticide chemicals are substances such as insecticides, fungicides, and weedkillers used in the production, storage, and transportation of food for the purpose of controlling insects, plant diseases, weeds, and other pests.

A primary objective in drafting the bill was to develop legislation that would provide for prompt administrative action to permit effective use of pesticide chemicals without hazard to the public health; legislation that would be safe for consumers and practical for producers.

The committee knows of no opposition to the bill. All interested parties are agreed as to the need for the bill.

#### *Existing law*

Under existing law, added poisonous and deleterious substances—and most pesticide chemicals fall in this class—must be kept out of foods unless they are required in production or cannot be avoided by good manufacturing practice. When such a substance is required in production—as many pesticide chemicals are required in growing agricultural crops—a tolerance may be established by the Secretary of Health, Education, and Welfare, but only after a formal public hearing. Detailed findings of fact and conclusions must be made by the Secretary as to the required use of the pesticide and the residue levels that may safely be tolerated.

#### *Need for new legislation*

Regulations limiting the amount of pesticidal residue which may remain in or on food have been issued under the present law in only one instance, although the law authorizing such regulations has been in effect for over 15 years. During all that time control has been exercised through unofficial and informal tolerances. In 1950, lengthy public hearings were held for the purpose of establishing official tolerances for fresh fruits and vegetables. These hearings, at a cost of nearly a half-million dollars to Government, to industry, to agricultural organizations, and to the various land-grant colleges, produced a very large volume of evidence that had not theretofore been gathered together, but the record is still under consideration by the Government and the necessary tolerances have not yet been issued. This has been responsible for uncertainty under the law. It has handicapped the Government in enforcing the law, the grower in complying with the law, and the pesticide manufacturer and Federal and State agencies in discharging their responsibility for advising and making recommendations to the grower with respect to the use of pesticide chemicals. This, together with the introduction of a large number of new pesticide chemicals, some of which are known to be toxic, has been responsible for concern that existing law is inadequate to protect the public health.

It has been generally recognized that a primary reason why tolerances have not been established to control agricultural usage of pesticide chemicals as intended by Congress has been the cumbersome, time-consuming, and impracticable procedure prescribed by existing law.

## SUMMARY OF THIS BILL

Under this bill, a regulation establishing a tolerance for a pesticide chemical used on raw agricultural commodities may be initiated by an applicant for registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act or by the Secretary of Health, Education, and Welfare. It is anticipated that, in the usual case, registration of a new economic poison would be withheld by the Department of Agriculture pending the issuance of the tolerance.

The tolerance-setting process for a particular pesticide chemical started by a person other than the Secretary is accomplished by (a) filing with the Secretary of Agriculture a request to certify to the Secretary of Health, Education, and Welfare that the pesticide chemical is useful for its intended purpose and that the requested tolerance reflects the amount of residue, if any, likely to result when the pesticide is used as proposed; and (b) filing of a petition proposing the tolerance, together with supporting scientific data to establish safe residue levels, with the Secretary of Health, Education, and Welfare. Within 90 days after the Secretary of Agriculture has certified to usefulness, the Secretary of Health, Education, and Welfare would make public a regulation establishing the tolerance.

The bill directs the Secretary of Health, Education, and Welfare to limit in or on raw agricultural commodities residues of poisonous or deleterious pesticide chemicals and pesticide chemicals of unknown or uncertain toxicity "to the extent necessary to protect the public health." In doing so, the Secretary is directed to take into account the necessity for the production of an adequate, wholesome, and economical food supply and the Secretary of Agriculture's opinion as to the amount of residue that will remain, as well as the overall effect the pesticide chemical may have in consumers' diets.

The Secretary is authorized to fix the tolerance at zero—and thus prohibit any residue—when the scientific data submitted does not justify a greater tolerance.

Provision is made for the referral of a petition proposing a tolerance or exemption to an ad hoc advisory committee of scientific experts selected by the National Academy of Sciences for a report and recommendation where this is requested by the proponent of the tolerance or is otherwise deemed necessary by the Secretary of Health, Education, and Welfare. Such referral extends the time limits prescribed for administrative action. The report and recommendation of any such advisory committee is considered by the Secretary before a tolerance is established and may be made a part of the official record in the event of a public hearing, in accordance with the provisions of the Administrative Procedure Act.

Provision is also made, among other things, for the establishment of tolerance regulations by the Secretary of Health, Education, and Welfare, upon his own initiative, for the exemption of certain pesticide chemicals from the need for tolerances, and for the issuance of temporary tolerances. These are described in more detail in following parts of this report.

## IMPROVEMENTS OVER EXISTING LAW

The principal respects in which this bill would change and improve existing law are—

1. A specific method for controlling the residue of pesticide chemicals which may remain in or on raw agricultural commodities is set up which is distinct from that controlling other poisonous or deleterious substances which are used in, or remain in, processed, fabricated, and manufactured food. In this way, recognition is given to the peculiar economic, agricultural, and public health problems which are important in the regulation of pesticide chemicals. Unlike many other chemicals, pesticide chemicals are necessary instruments of agriculture in producing and expanding our food supply and are comprehensively regulated by the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act.

2. The determination of questions of agricultural usefulness and probable residue levels involved in the establishment of tolerances, is made a function of the Department of Agriculture; while the determination of questions of a public health nature remains a function of the Department of Health, Education, and Welfare. In this way, a more logical grouping of governmental functions is effected than under existing law which casts the responsibility for determining agricultural questions as well as public health questions upon the Department of Health, Education, and Welfare.

3. Before any pesticide-chemical residue may remain in or on a raw agricultural commodity, scientific data must be presented to show that the pesticide-chemical residue is safe from the standpoint of the food consumer. The burden is on the person proposing the tolerance or exemption to establish the safety of such pesticide-chemical residue.

4. Specific time limits for informal administrative action in establishing tolerances are prescribed to avoid the adverse consequences of inaction and protracted delay. Promptness is vital in this area of regulation to all concerned.

5. Provision is made for the appointment of independent committees of scientific experts selected by the National Academy of Sciences to study proposed regulations establishing tolerances for pesticide chemicals and to make recommendations thereon to the Department of Health, Education, and Welfare.

6. The procedure prescribed for establishing tolerances emphasizes informal proceedings rather than the formal public hearing type of proceedings. This is accomplished in two ways: First, the bill sets up a procedure whereby the manufacturer or formulator most directly concerned with the establishment of a tolerance for a particular pesticide chemical has the right to initiate the proceedings for a tolerance on that chemical by filing a petition. Second, the bill provides for the initial setting of tolerances without a formal public hearing, limiting such hearings to issues which may remain in dispute at the conclusion of the informal proceedings. Existing law requires a formal public hearing before any tolerance can be established and such a proceeding can be initiated only upon the request of a substantial segment of the industry or upon the initiative of the Government.

7. Where the informal procedures do not produce a satisfactory tolerance or exemption the rights of all concerned to a full and fair hearing on the disputed issues are preserved.



8. Enforcement of the adulteration provisions relating to raw agricultural commodities bearing pesticide chemicals is simplified and made more effective, since, under the bill, authority to establish tolerances extends to pesticide chemicals not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, as well as pesticide chemicals which are known to be poisonous or deleterious.

9. Provision is made for the exemption of pesticide chemicals from the requirements of a tolerance in cases where tolerances are not necessary to protect the public health and for the establishment of temporary tolerances for those pesticide chemicals which are used in or on raw agricultural commodities under experimental permits issued by the Department of Agriculture.

#### THE COMMITTEE AMENDMENT

The committee amendment, adopted at the request of the Department of Health, Education, and Welfare, authorizes the Secretary to establish a schedule of fees, to be charged applicants requesting establishment of tolerances or exemptions from tolerances. The Secretary would have discretion in fixing the fees so as to make the service provided under this legislation as nearly self-supporting as possible.

Plainly this bill places important new responsibilities on the Department and emphasizes the need for speedy administrative action. It authorizes the use of independent scientific panels in the administrative process. All of this will cost money.

The Department of Health, Education, and Welfare has stated, and the committee is convinced, that this additional work cannot be absorbed without serious neglect of other essential responsibilities already placed upon the Food and Drug Administration of the Department.

It is reasonable that the cost of this service, so far as practicable, should be borne by the applicant for the tolerance. From the service, the applicant derives the benefit of independent and departmental scientific review of the data compiled to establish the safety of the proposed residue tolerance. This should tend to avoid any possible harmful effects from use of the manufacturer's products, and is a legitimate charge to the cost of doing business. Prompt establishment of tolerances also will inure to the benefit of the chemical manufacturer by eliminating the present uncertainty as to safe usage levels.

Testimony before the committee on this matter indicated that authorization for collecting fees presently is in effect in the Food and Drug Administration in the case of services rendered in connection with the certification of certain antibiotic drugs, in the case of all charcoal colors intended for use in food, in the case of all preparations of insulin, and in the case of seafood service. Accordingly, the committee amendment would merely extend a precedent which already has been established.

## ANALYSIS OF THE BILL BY SECTIONS

An explanation of the various provisions of the bill is contained in the sectional analysis which follows:

*Section 1*

This section contains definitions of the terms "pesticide chemical" and "raw agricultural commodity." These terms are not used in the present law. The term "pesticide chemical" is defined to include any substance which, alone, in chemical combination or in formulation with other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act (7 U. S. C. secs. 135-135h), which is used in the production, storage, or transportation of raw agricultural commodities. The term "raw agricultural commodity" is defined to include any food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

It is intended by these definitions to draw a sharp line of distinction between the subjects covered by this bill and the subjects which are unaffected by it. This bill covers the regulations of the residue from pesticide chemicals which may remain in or on food in its raw or natural state as usually purchased by the consumer or the food processor. Such food would include fresh fruits and vegetables, grains, nuts, eggs, and milk and similar agricultural produce grown or produced at the farm level. It would also include those foods which have been subjected to certain customary postharvest treatment prior to marketing, such as the washing or coloring of fruits in their unpeeled natural form, the stripping of the outer leaves of lettuce, and the preparation of fresh green salads. This bill does not attempt to regulate the residue from pesticide chemicals which may remain in or on processed, fabricated, or manufactured food other than by limiting the permissible residues on raw agricultural commodities. Food processed by operations such as cooking, freezing, dehydration, or milling would remain subject to section 406 rather than being regulated by this bill. For example, the provisions of this bill would apply to the residue of DDT remaining in or on fresh apples or apples which are washed or waxed for market. The provisions of this bill would not apply to any residue of DDT remaining in or on apple-juice or applesauce which may be prepared or produced from such apples. Nor would the bill apply to sun-dried or artificially dehydrated fruits.

The term "pesticide chemical" has been selected in order to make it clear that tolerances (or exemptions) under this bill are to be established with reference to the poisonous, deleterious, or inadequately tested ingredients of a formulated "economic poison" rather than with reference to the formulated or finished product itself. For example, in a finished product containing DDT a tolerance under this bill would be established for DDT rather than for the finished product itself.

*Section 2*

The Federal Food, Drug, and Cosmetic Act (in sec. 301 (a)) prohibits the shipment in interstate commerce of adulterated food.

Under section 402 (a) (2), a food is deemed to be adulterated if it bears or contains any "added" poisonous or deleterious substance which is "unsafe" within the meaning of section 406 of the act.

Section 406 contains a general declaration that any poisonous or deleterious substance added to food is unsafe except where the substance is "required in the production thereof and cannot be avoided by good manufacturing practice." However, in any case where such a substance is so required or cannot be so avoided (and this is so in case of the use of pesticide chemicals in the production of most raw agricultural commodities), section 406 directs the Secretary of Health, Education, and Welfare to promulgate regulations limiting the quantity on the food to such extent as such Secretary finds to be necessary for protection of the public health.

As explained elsewhere in this report, the primary purpose of this legislation is to provide a new method, and new procedures, for regulating the amount of pesticide chemical residue which shall be permitted to remain in or on raw agricultural commodities.

To attain this objective, section 2 of the bill amends section 402 (a) (2) so as to provide, in the case of any raw agricultural commodity bearing or containing a pesticide chemical, that such commodity shall be deemed to be adulterated if such pesticide chemical is unsafe within the meaning of the new section 408 (a), which is being added to the law by section 3 of the bill. Thus, section 406 of the law will no longer be applicable in the case of raw agricultural commodities bearing or containing pesticide chemicals.

### *Section 3*

This section amends chapter IV of the present law by adding a new section 408. This section would supplant section 406 insofar as the residues of pesticide chemicals remaining in or on raw agricultural commodities are concerned.

*Section 408 (a).*—This subsection specifies the conditions under which a pesticide chemical is deemed unsafe within the meaning of the adulteration provision in section 402 (a) (2). Under this subsection, the residue of a poisonous or deleterious pesticide chemical or a pesticide chemical which is not generally recognized as safe is deemed unsafe if no tolerance or exemption has been established for it, or, in the event that a tolerance has been established, if the quantity of the residue exceeds the tolerance.

*Section 408 (b).*—This subsection gives to the Secretary of Health, Education, and Welfare the authority to establish tolerances. The subsection also sets forth the principal factors which should guide the administrative judgment in taking such action. The factors are designed to assure a proper balance between the need for protecting the consumer and the need for assuring an adequate, wholesome, and economical food supply. The Secretary is authorized to establish the tolerance at zero level in cases where a higher tolerance is not justified by the scientific data.

*Section 408 (c).*—This subsection authorizes the establishment of regulations exempting pesticide chemicals from the requirements of a tolerance where a quantitative restriction on the residue of such a chemical is not necessary.

*Section 408 (d).*—This subsection prescribes the procedure for establishing tolerances or exemptions pursuant to a petition.

Paragraph (1) of this subsection sets forth who may file a petition, initiating the regulatory process and the type of data which is to be contained in the petition.



A petition may be filed only by a person who has registered or who has submitted an application for registration under the Federal Insecticide, Fungicide, and Rodenticide Act for an economic poison containing the pesticide chemical for which the tolerance or exemption is sought. It is intended by this provision to limit the class of persons who may file a petition to those who are in the best position to develop and present the type of scientific data which are necessary for the exercise of sound administrative judgment.

The data to be contained in a petition include information about the pesticide chemical, how it is to be used, full reports of investigations made with respect to the safety of the pesticide chemical, the results of tests on the amount of residue remaining, including a description of the analytical methods used, practicable methods for removing the residue which exceeds any proposed tolerance, together with a proposed tolerance and reasonable grounds to support the petition.

It is intended that a rule of reason should dictate the nature and extent of the information which should be submitted with a petition. What is contemplated is data adequate to permit an accurate appraisal of safety to protect the public health. In this respect the data as to a particular chemical will depend upon many variable factors, including its physical and chemical properties, recommended purpose, toxicity, and rate of disappearance. The emphasis to be placed on any such factor will similarly depend on the particular pesticide chemical under consideration and its proposed usage. In some cases it is to be expected that, despite extensive research, completely satisfactory analytical methods or methods of residue removal may not be available. Where satisfactory chemical methods have not been developed, reliable bioassay methods or other reliable methods may be used in lieu of, or in combination with, chemical methods to identify and measure the residue. It is understood that data as to practicable methods for removing residue are required only in cases where the residue would otherwise exceed the proposed tolerance.

Paragraphs (2), (3), and (4) set forth the informal procedure to be followed by the Secretary of Health, Education, and Welfare in establishing tolerances or exemptions in cases where a petition is filed. This procedure contemplates an informal rulemaking process after the filing of a petition to enable prompt administrative action, to obviate unnecessary public hearings, and to minimize the issues where hearings are necessary.

Paragraph (2) provides that the Secretary shall establish a tolerance or exemption for a pesticide chemical for which a petition for a tolerance or exemption is filed within 90 days after the Secretary of Agriculture has certified that the pesticide chemical is useful pursuant to subsection (1). Paragraph (3) provides for a variation in this procedure when the petition is referred to an advisory committee.

Paragraph (3) sets forth the procedure for referring a petition to an advisory committee. Under this, the petitioner may, within 90 days after filing a petition, request reference to an advisory committee or the Secretary may cause such referral upon his own initiative. If such a request or referral is made, the advisory committee is selected and appointed in accordance with subsection (g). The advisory committee, after a study of the petition and all other data before it, would certify a report and recommendations, together with all underlying

data and a statement of the reasons or basis for the recommendation, to the Secretary within 60 days after the referral (or within 90 days if extended for good cause). The Secretary would then establish the tolerance or exemption after having taken into consideration the report and recommendations of the advisory committee.

Paragraph (4) provides that regulations establishing such tolerances or exemptions become effective upon publication in the Federal Register.

Paragraph (5) sets forth the procedure for obtaining and holding public hearings on tolerances or exemption regulations which are initially promulgated upon the basis of the informal process contemplated under paragraphs (2) and (3). This paragraph provides for a formal rulemaking hearing but only on those parts of tolerance or exemption regulations to which objection is made. Any "adversely affected" person is given the opportunity to file objections and request a public hearing. This would include such persons as the person filing the petition, a food processor or food manufacturer, or a grower using the pesticide chemical. The person filing the petition is authorized to reply to the objections, whereupon the hearing is held. Specific provision is made whereby the report of an advisory committee may be introduced into evidence at such hearing subject to section 7 (c) of the Administrative Procedure Act. In the event that cross-examination of such report is necessary for full and true disclosure of the facts under section 7 (c), provision is made for a member of the advisory committee to attend and testify at the hearing with respect to the report and underlying data. This should not be construed to deny the right of any member of an advisory committee to so attend or testify with regard to the majority report of the committee or to a minority report if there is one. Section 7 (c) also would authorize evidence in rebuttal of the report. Regulations resulting from such hearing, which are to be issued as soon as practicable after the hearing, must be based upon detailed findings and substantial evidence of record.

*Section 408 (e).*—This subsection prescribes a procedure whereby the Secretary of Health, Education, and Welfare may propose a tolerance or exemption regulation upon his own initiative or upon the request of an interested person. It is anticipated that in the case of new pesticides, tolerance or exemption regulations will be initiated by petition under subsection (d) rather than under the provisions of this subsection.

*Section 408 (f).*—This subsection provides that data submitted to the Secretary and to advisory committees in support of a petition are deemed confidential until publication of a regulation based thereon under (2) or (3) of subsection (d). This provision is designed to assure equitable protection to research information until the time when regulations are published for public comment and possible formal hearings.

*Section 408 (g).*—This subsection specifies the manner in which the ad hoc advisory committees are selected and appointed and the qualifications of members serving on such committees. This is one of the key provisions of the bill which enables a study of proposed tolerances or exemptions by impartial scientific experts of diversified professional backgrounds who will be able to bring to bear on the administrative process the results of particular experience and expertise



in the field. The recommendations of these groups will obviously be most carefully considered and will constitute an important part of the scientific evidence. Under this bill, advisory committees will be appointed by the Secretary of Health, Education, and Welfare and the members thereof will be selected by the National Academy of Sciences. In making the selection, the Academy will be guided by the qualification standards specified in the bill which emphasize the need for experts of diversified experience and background, including experts drawn from the agricultural field. It is intended that the Academy will select the land-grant college representative or representatives on the basis of recommendations made by the Association of Land-Grant Colleges and Universities. Provision is made whereby the Secretary of Health, Education, and Welfare may prescribe general rules pertaining to the operations of advisory committees. It is not intended that such rules should impair the basic flexibility and independence of action which will be necessary to the proper functioning of the advisory committees under this bill.

*Section 408 (h).*—This subsection is designed to make it clear that the proponent of a tolerance or exemption regulation or his representative and the Secretary of Health, Education, and Welfare have the unqualified right to consult with an advisory committee.

*Section 408 (i).*—This subsection provides for judicial review in the United States courts of appeals of orders of the Secretary of Health, Education, and Welfare establishing tolerance or exemption regulations and of orders of the Secretary of Agriculture with respect to certifications of usefulness. Review is available in any case of "actual controversy" to any person who will be adversely affected by tolerance or exemption regulations or by a certification as to agricultural usefulness. The bill does not restrict review to participants in the administrative hearing. The nature of judicial review provided is the same as that provided for in section 10 of the Administrative Procedure Act as interpreted in *Universal Camera Corp. v. National Labor Relations Board* (340 U. S. 474) and applied with respect to section 701 (f) of the present Federal Food, Drug, and Cosmetic Act. Specific provision is made for consideration by the courts of any report and recommendation of an advisory committee properly presented at the public hearing.

*Section 408 (j).*—This subsection provides for the establishment of temporary tolerances for pesticide chemicals used on experimental permits in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act.

*Section 408 (k).*—This subsection saves the effectiveness of tolerance regulations which may be promulgated under the authority of section 406 (a) upon the basis of public hearings initiated before January 1, 1953 (this embraces at the present time only those initiated in 1950 for fresh fruits and vegetables). These regulations would be subject to amendment and repeal under the provisions of this bill.

*Section 408 (l).*—This subsection sets forth the functions of the Secretary of Agriculture under the bill. Under the present law the Secretary of Agriculture has no responsibility in the setting of tolerances by the Secretary of Health, Education, and Welfare. Agricultural usage and the necessity for using pesticide chemicals in agriculture as well as questions of safety are determined by the Secretary of Health, Education, and Welfare under the present law. This bill imposes upon the Secretary of Agriculture the function of (a) deter-



mining the usefulness of a pesticide chemical in agriculture, and (b) stating an opinion whether a proposed tolerance or exemption reasonably reflects the residue which is likely to result when the pesticide chemical is used as proposed. In this respect, generally recognized and accepted good agricultural practices which normally eliminate or minimize residue may be taken into account in establishing tolerances. The bill delegates to the Secretary of Health, Education, and Welfare the function of determining safe residue limits from the standpoint of the food consumer.

Under this procedure, a person who is qualified to file a petition for a tolerance or exemption may request the Secretary of Agriculture to make, for example, a certification to the Secretary of Health, Education, and Welfare that the pesticide chemical named in the petition is useful in controlling insects or other pests which affect specified raw agricultural commodities for which the tolerance or exemption is sought. After study of the data before him, the Secretary of Agriculture may make the certification as proposed or give the person requesting the certification the opportunity for a formal hearing based on a record and stated findings. Tolerances or exemptions would not be established by the Secretary of Health, Education, and Welfare until after a certification of usefulness was made. Each certification of usefulness must be accompanied by an opinion by the Secretary of Agriculture whether the proposed tolerance reasonably reflects the amount of residue which may be expected when used as proposed. The Secretary of Agriculture is also given the exclusive authority under the bill to promulgate regulations implementing the provisions of this subsection.

It is to be noted that the functions of the Secretary of Agriculture under this bill are in addition to those prescribed for the administration and enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act, which is a premarketing control over economic poisons containing pesticide chemicals. Nothing in this bill is intended to change or modify in any way that act and the interpretations thereunder.

*Section 408 (m).*—This subsection makes provision for the establishment of implementing rules and regulations prescribing the manner in which tolerance and exemption rules may be amended or repealed. The bill contemplates that such regulations will be made in the manner prescribed in section 4 of the Administrative Procedure Act. It is intended that public hearings should be held on important regulations and that a minimum of 60 days should be allowed for the submission of views by interested persons before the adoption of a proposed regulation as final.

*Section 408 (n).*—This subsection is designed to make it clear that section 303 (c) of the present law relating to guaranties is applicable to this bill. It is not intended to change or modify in any way the guaranty provisions of the present law.

*Section 408 (o).*—This subsection is the committee amendment relating to the establishment of fees. It has been discussed above.

## CHANGES IN EXISTING LAW

In compliance with clause 4 of rule XXIX of the Standing Rules of the Senate, the changes in existing law made by the bill are as follows (new matter is in italics):

## FEDERAL FOOD, DRUG, AND COSMETIC ACT, AS AMENDED

\* \* \* \* \*

## CHAPTER II—DEFINITIONS

SEC. 201. For the purposes of this Act—

\* \* \* \* \*

(q) *The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U. S. C., secs. 135–135k) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.*

(r) *The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.*

\* \* \* \* \*

## CHAPTER IV—FOOD

\* \* \* \* \*

## ADULTERATED FOOD

SEC. 402. A food shall be deemed to be adulterated—

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance, *except a pesticide chemical in or on a raw agricultural commodity, which is unsafe within the meaning of section 406, or if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a);* or (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

\* \* \* \* \*

## TOLERANCES FOR POISONOUS INGREDIENTS IN FOOD AND CERTIFICATION OF COAL-TAR COLORS FOR FOOD

SEC. 406. (a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a); but when such substance is so required or cannot be so avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 402 (a). In determining the quantity of such added substance to be tolerated in or on different articles of food the Secretary shall take into account the extent to which the use of such substance

is required or cannot be avoided in the production of each such article, and the other way: in which the consumer may be affected by the same or other poisonous or deleterious substances.

\* \* \* \* \*

# TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

SEC. 408. (a) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of clause (2) of section 402 (a) unless—

(1) a tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by the Secretary of Health, Education, and Welfare under this section and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(2) with respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance by the Secretary under this section.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of section 402 (a).

(b) The Secretary shall promulgate regulations establishing tolerances with respect to the use in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals which are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In establishing any such regulation, the Secretary shall give appropriate consideration, among other relevant factors, (1) to the necessity for the production of an adequate, wholesome, and economical food supply; (2) to the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (3) to the opinion of the Secretary of Agriculture as submitted with a certification of usefulness under subsection (1) of this section. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section. In carrying out the provisions of this section relating to the establishment of tolerances, the Secretary may establish the tolerance applicable with respect to the use of any pesticide chemical in or on any raw agricultural commodity at zero level if the scientific data before the Secretary does not justify the establishment of a greater tolerance.

(c) The Secretary shall promulgate regulations exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on any or all raw agricultural commodities when such a tolerance is not necessary to protect the public health. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section.

(d) (1) Any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Secretary of Health, Education, and Welfare, a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of, such economic poison, or exempting the pesticide chemical from a tolerance. The petition shall contain data showing—

(A) the name, chemical identity, and composition of the pesticide chemical;

(B) the amount, frequency, and time of application of the pesticide chemical;

(C) full reports of investigations made with respect to the safety of the pesticide chemical;

(D) the results of tests on the amount of residue remaining, including a description of the analytical methods used;

(E) practicable methods for removing residue which exceeds any proposed tolerance;

(F) proposed tolerances for the pesticide chemical if tolerances are proposed; and

(G) reasonable grounds in support of the petition.

Samples of the pesticide chemical shall be furnished to the Secretary upon request. Notice of the filing of such petition shall be published in general terms by the Secretary within thirty days after filing. Such notice shall include the analytical methods available for the determination of the residue of the pesticide chemical for which a tolerance or exemption is proposed.



(2) Within ninety days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, the Secretary shall, after giving due consideration to the data submitted in the petition or otherwise before him, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful, or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes,

unless within such ninety-day period the person filing the petition requests that the petition be referred to an advisory committee or the Secretary within such period otherwise deems such referral necessary, in either of which event the provisions of paragraph (3) of this subsection shall apply in lieu hereof.

(3) In the event that the person filing the petition requests, within ninety days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, that the petition be referred to an advisory committee, or the Secretary within such period otherwise deems such referral necessary, the Secretary shall forthwith submit the petition and other data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal in the petition to the Secretary, together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary shall, after giving due consideration to all data then before him, including such report, recommendations, underlying data, and statement, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful; or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes.

(4) The regulations published under paragraph (2) or (3) of this subsection will be effective upon publication.

(5) Within thirty days after publication, any person adversely affected by a regulation published pursuant to paragraph (2) or (3) of this subsection, or pursuant to subsection (e), may file objections thereto with the Secretary, specifying with particularity the provisions of the regulation deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. A copy of the objections filed by a person other than the petitioner shall be served on the petitioner, if the regulation was issued pursuant to a petition. The petitioner shall have two weeks to make a written reply to the objections. The Secretary shall thereupon, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material subject to the provisions of section 7 (c) of the Administrative Procedure Act (5 U. S. C., sec. 1006 (c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: Provided, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and by order make public a regulation. Such regulation shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the regulation is based. No such order shall take effect prior to the ninetieth day after its publication, unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

(e) The Secretary may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Secretary may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person, who has registered, or who has submitted an

application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Secretary shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) or subsection (d).

(f) All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until publication of a regulation under paragraph (2) or (3) of subsection (d) of this section. Until such publication, such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section.

(g) Whenever the referral of a petition or proposal to an advisory committee is requested under this section, or the Secretary otherwise deems such referral necessary the Secretary shall forthwith appoint a committee of competent experts to review the petition or proposal and to make a report and recommendations thereon. Each such advisory committee shall be composed of experts, qualified in the subject matter of the petition and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(h) A person who has filed a petition or who has requested the referral of a proposal to an advisory committee in accordance with the provisions of this section, as well as representatives of the Department of Health, Education, and Welfare, shall have the right to consult with any advisory committee provided for in subsection (g) in connection with the petition or proposal.

(i) (1) In a case of actual controversy as to the validity of any order under subsection (d) (5), (e), or (l) any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part.

(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith served upon the Secretary, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Upon such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee.

(3) In the case of a petition with respect to an order under subsection (l), a copy of the petition shall be forthwith served upon the Secretary of Agriculture, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Under such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the



Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The courts shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

(j) The Secretary may, upon the request of any person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act or upon his own initiative, establish a temporary tolerance for the pesticide chemical for the uses covered by the permit whenever in his judgment such action is deemed necessary to protect the public health, or may temporarily exempt such pesticide chemical from a tolerance. In establishing such a tolerance, the Secretary shall give due regard to the necessity for experimental work in developing an adequate, wholesome, and economical food supply and to the limited hazard to the public health involved in such work when conducted in accordance with applicable regulations under the Federal Insecticide, Fungicide, and Rodenticide Act.

(k) Regulations affecting pesticide chemicals in or on raw agricultural commodities which are promulgated under the authority of section 406 (a) upon the basis of public hearings instituted before January 1, 1953, in accordance with section 701 (e), shall be deemed to be regulations under this section and shall be subject to amendment or repeal as provided in subsection (m).

(l) The Secretary of Agriculture, upon request of any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d) (1) with respect to a pesticide chemical which constitutes, or is an ingredient of, such economic poison, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Secretary deems it necessary to postpone action for such period, on the basis of data before him, either—

(1) certify to the Secretary of Health, Education, and Welfare that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Secretary of Agriculture takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Secretary may by order make the certification as proposed. In the event that the action described in clause (A) or (C) is taken, the Secretary shall by order make the certification as proposed with respect to such parts thereof as are requested. In the event a hearing is requested, the Secretary of Agriculture shall provide opportunity for a prompt hearing. The certification of the Secretary of Agriculture as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Secretary of Agriculture exceed one hundred and sixty days. The Secretary shall submit to the Secretary of Health, Education, and Welfare with any certification of usefulness under this sub-



section an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Secretary of Agriculture, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.

(m) The Secretary of Health, Education, and Welfare shall prescribe by regulations the procedure by which regulations under this section may be amended or repealed, and the procedure by which regulations under this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of regulations establishing tolerances, including the appointment of advisory committees and the procedure for referring petitions to such committees.

(n) The provisions of section 303 (c) of the Federal Food, Drug, and Cosmetic Act with respect to the furnishing of guaranties shall be applicable to raw agricultural commodities covered by this section.

(o) The Secretary of Health, Education, and Welfare shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Secretary, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Secretary's functions under this section. Under such regulations, the performance of the Secretary's services or other functions pursuant to this section, including any one or more of the following, may be conditioned upon the payment of such fees: (1) the acceptance of filing of a petition submitted under subsection (d), (2) the promulgation of a regulation establishing a tolerance, or an exemption from the necessity of a tolerance, under this section, or the amendment or repeal of such a regulation; (3) the referral of a petition or proposal under this section to an advisory committee; (4) the acceptance for filing of objections under subsection (d) (5); or (5) the certification and filing in court of a transcript of the proceedings and the record under subsection (i) (2). Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Secretary such waiver or refund is equitable and not contrary to the purposes of this subsection.





Calendar No. 1647

83<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION

# H. R. 7125

[Report No. 1635]

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## IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 5), 1954

Read twice and referred to the Committee on Labor and Public Welfare

JUNE 25 (legislative day, JUNE 22), 1954

Reported by Mr. PURTELL, with an amendment

[Insert the part printed in italic]

*Passed Senate 7/1  
(same as report  
6/25)*

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## AN ACT

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That section 201 of the Federal Food, Drug, and Cosmetic  
4       Act is amended by adding at the end thereof the following  
5       new paragraphs:

6       “(q) The term ‘pesticide chemical’ means any sub-  
7       stance which, alone, in chemical combination or in formu-  
8       lation with one or more other substances, is an ‘economic  
9       poison’ within the meaning of the Federal Insecticide,  
10      Fungicide, and Rodenticide Act (7 U. S. C., secs.



1 135-135k) as now in force or as hereafter amended, and  
2 which is used in the production, storage, or transportation  
3 of raw agricultural commodities.

4 “(r) The term ‘raw agricultural commodity’ means  
5 any food in its raw or natural state, including all fruits that  
6 are washed, colored, or otherwise treated in their unpeeled  
7 natural form prior to marketing.”

8 SEC. 2. Clause (2) of section 402 (a) of the Federal  
9 Food, Drug, and Cosmetic Act is amended to read as follows:  
10 “(2) if it bears or contains any added poisonous or added  
11 deleterious substance, except a pesticide chemical in or on a  
12 raw agricultural commodity, which is unsafe within the  
13 meaning of section 406, or if it is a raw agricultural com-  
14 modity and it bears or contains a pesticide chemical which is  
15 unsafe within the meaning of section 408 (a) ;”.

16 SEC. 3. Chapter IV of the Federal Food, Drug, and Cos-  
17 metic Act is amended by adding at the end thereof the fol-  
18 lowing new section:

19 “TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW  
20 AGRICULTURAL COMMODITIES

21 “SEC. 408. (a) Any poisonous or deleterious pesticide  
22 chemical, or any pesticide chemical which is not generally  
23 recognized, among experts qualified by scientific training and  
24 experience to evaluate the safety of pesticide chemicals, as

1 safe for use, added to a raw agricultural commodity, shall be  
2 deemed unsafe for the purposes of the application of clause  
3 (2) of section 402 (a) unless—

4 “(1) a tolerance for such pesticide chemical in or  
5 on the raw agricultural commodity has been prescribed  
6 by the Secretary of Health, Education, and Welfare  
7 under this section and the quantity of such pesticide  
8 chemical in or on the raw agricultural commodity is  
9 within the limits of the tolerance so prescribed; or

10 “(2) with respect to use in or on such raw agri-  
11 cultural commodity, the pesticide chemical has been  
12 exempted from the requirement of a tolerance by the  
13 Secretary under this section.

14 While a tolerance or exemption from tolerance is in effect  
15 for a pesticide chemical with respect to any raw agricultural  
16 commodity, such raw agricultural commodity shall not, by  
17 reason of bearing or containing any added amount of such  
18 pesticide chemical, be considered to be adulterated within  
19 the meaning of clause (1) of section 402 (a).

20 “(b) The Secretary shall promulgate regulations es-  
21 tablishing tolerances with respect to the use in or on raw  
22 agricultural commodities of poisonous or deleterious pesti-  
23 cide chemicals and of pesticide chemicals which are not gen-  
24 erally recognized, among experts qualified by scientific train-

1 ing and experience to evaluate the safety of pesticide chemi-  
2 cals, as safe for use, to the extent necessary to protect the  
3 public health. In establishing any such regulation, the  
4 Secretary shall give appropriate consideration, among other  
5 relevant factors, (1) to the necessity for the production  
6 of an adequate, wholesome, and economical food supply;  
7 (2) to the other ways in which the consumer may be af-  
8 fected by the same pesticide chemical or by other related  
9 substances that are poisonous or deleterious; and (3) to  
10 the opinion of the Secretary of Agriculture as submitted with  
11 a certification of usefulness under subsection (1) of this  
12 section. Such regulations shall be promulgated in the man-  
13 ner prescribed in subsection (d) or (e) of this section. In  
14 carrying out the provisions of this section relating to the  
15 establishment of tolerances, the Secretary may establish  
16 the tolerance applicable with respect to the use of any  
17 pesticide chemical in or on any raw agricultural commodity  
18 at zero level if the scientific data before the Secretary does  
19 not justify the establishment of a greater tolerance.

20 “(c) The Secretary shall promulgate regulations ex-  
21 empting any pesticide chemical from the necessity of a  
22 tolerance with respect to use in or on any or all raw agricul-  
23 tural commodities when such a tolerance is not necessary to  
24 protect the public health. Such regulations shall be promul-



1 gated in the manner prescribed in subsection (d) or (e)  
2 of this section.

3 “(d) (1) Any person who has registered, or who has  
4 submitted an application for the registration of, an economic  
5 poison under the Federal Insecticide, Fungicide, and Roden-  
6 ticide Act may file with the Secretary of Health, Education,  
7 and Welfare, a petition proposing the issuance of a regulation  
8 establishing a tolerance for a pesticide chemical which consti-  
9 tutes, or is an ingredient of, such economic poison, or  
10 exempting the pesticide chemical from the requirement of  
11 a tolerance. The petition shall contain data showing—

12 “(A) the name, chemical identity, and composition  
13 of the pesticide chemical;

14 “(B) the amount, frequency, and time of application  
15 of the pesticide chemical;

16 “(C) full reports of investigations made with respect  
17 to the safety of the pesticide chemical;

18 “(D) the results of tests on the amount of residue  
19 remaining, including a description of the analytical  
20 methods used;

21 “(E) practicable methods for removing residue  
22 which exceeds any proposed tolerance;

23 “(F) proposed tolerances for the pesticide chemical  
24 if tolerances are proposed; and

1           “(G) reasonable grounds in support of the petition.  
2 Samples of the pesticide chemical shall be furnished to the  
3 Secretary upon request. Notice of the filing of such petition  
4 shall be published in general terms by the Secretary within  
5 thirty days after filing. Such notice shall include the  
6 analytical methods available for the determination of the  
7 residue of the pesticide chemical for which a tolerance or  
8 exemption is proposed.

9           “(2) Within ninety days after a certification of useful-  
10 ness by the Secretary of Agriculture under subsection  
11 (1) with respect to the pesticide chemical named in the peti-  
12 tion, the Secretary of Health, Education, and Welfare shall,  
13 after giving due consideration to the data submitted in the  
14 petition or otherwise before him, by order make public a  
15 regulation—

16           “(A) establishing a tolerance for the pesticide  
17 chemical named in the petition for the purposes for  
18 which it is so certified as useful, or

19           “(B) exempting the pesticide chemical from the  
20 necessity of a tolerance for such purposes,

21 unless within such ninety-day period the person filing the  
22 petition requests that the petition be referred to an advisory  
23 committee or the Secretary within such period otherwise  
24 deems such referral necessary, in either of which events

1 the provisions of paragraph (3) of this subsection shall apply  
2 in lieu hereof.

3 “(3) In the event that the person filing the petition  
4 requests, within ninety days after a certification of useful-  
5 ness by the Secretary of Agriculture under subsection (1)  
6 with respect to the pesticide chemical named in the peti-  
7 tion, that the petition be referred to an advisory committee,  
8 or in the event the Secretary of Health, Education, and Wel-  
9 fare within such period otherwise deems such referral nec-  
10 essary, the Secretary of Health, Education, and Welfare  
11 shall forthwith submit the petition and other data  
12 before him to an advisory committee to be appointed  
13 in accordance with subsection (g) of this section. As  
14 soon as practicable after such referral, but not later than  
15 sixty days thereafter, unless extended as hereinafter provided,  
16 the committee shall, after independent study of the data  
17 submitted to it by the Secretary and other data before it,  
18 certify to the Secretary a report and recommendations on the  
19 proposal in the petition to the Secretary, together with all  
20 underlying data and a statement of the reasons or basis for  
21 the recommendations. The sixty-day period provided for  
22 herein may be extended by the advisory committee for an  
23 additional thirty days if the advisory committee deems this  
24 necessary. Within thirty days after such certification, the



1 Secretary shall, after giving due consideration to all data  
2 then before him, including such report, recommendations,  
3 underlying data, and statement, by order make public a  
4 regulation—

5 “(A) establishing a tolerance for the pesticide  
6 chemical named in the petition for the purposes for  
7 which it is so certified as useful; or

8 “(B) exempting the pesticide chemical from the  
9 necessity of a tolerance for such purposes.

10 “(4) The regulations published under paragraph (2)  
11 or (3) of this subsection will be effective upon publication.

12 “(5) Within thirty days after publication, any person  
13 adversely affected by a regulation published pursuant to  
14 paragraph (2) or (3) of this subsection, or pursuant to  
15 subsection (e), may file objections thereto with the Secre-  
16 tary, specifying with particularity the provisions of the  
17 regulation deemed objectionable, stating reasonable grounds  
18 therefor, and requesting a public hearing upon such objec-  
19 tions. A copy of the objections filed by a person other than  
20 the petitioner shall be served on the petitioner, if the regu-  
21 lation was issued pursuant to a petition. The petitioner shall  
22 have two weeks to make a written reply to the objections.  
23 The Secretary shall thereupon, after due notice, hold such  
24 public hearing for the purpose of receiving evidence relevant  
25 and material to the issues raised by such objections. Any

1 report, recommendations, underlying data, and reasons certi-  
2 fied to the Secretary by an advisory committee shall be made  
3 a part of the record of the hearing, if relevant and material,  
4 subject to the provisions of section 7 (c) of the Adminis-  
5 trative Procedure Act (5 U. S. C., sec. 1006 (c) ). The  
6 National Academy of Sciences shall designate a member of  
7 the advisory committee to appear and testify at any such  
8 hearing with respect to the report and recommendations of  
9 such committee upon request of the Secretary, the petitioner,  
10 or the officer conducting the hearing: *Provided*, That this  
11 shall not preclude any other member of the advisory com-  
12 mittee from appearing and testifying at such hearing. As  
13 soon as practicable after completion of the hearing, the  
14 Secretary shall act upon such objections and by order make  
15 public a regulation. Such regulation shall be based only on  
16 substantial evidence of record at such hearing, including any  
17 report, recommendations, underlying data, and reasons cer-  
18 tified to the Secretary by an advisory committee, and shall  
19 set forth detailed findings of fact upon which the regulation  
20 is based. No such order shall take effect prior to the nine-  
21 tieth day after its publication, unless the Secretary finds that  
22 emergency conditions exist necessitating an earlier effective  
23 date, in which event the Secretary shall specify in the order  
24 his findings as to such conditions.

1       “(e) The Secretary may at any time, upon his own  
2 initiative or upon the request of any interested person, pro-  
3 pose the issuance of a regulation establishing a tolerance for  
4 a pesticide chemical or exempting it from the necessity of  
5 a tolerance. Thirty days after publication of such a pro-  
6 posal, the Secretary may by order publish a regulation based  
7 upon the proposal which shall become effective upon publi-  
8 cation unless within such thirty-day period a person  
9 who has registered, or who has submitted an application for the  
10 registration of, an economic poison under the Federal In-  
11 secticide, Fungicide, and Rodenticide Act containing the  
12 pesticide chemical named in the proposal, requests that  
13 the proposal be referred to an advisory committee. In the  
14 event of such a request, the Secretary shall forthwith sub-  
15 mit the proposal and other relevant data before him to an  
16 advisory committee to be appointed in accordance with  
17 subsection (g) of this section. As soon as practicable after  
18 such referral, but not later than sixty days thereafter, unless  
19 extended as hereinafter provided, the committee shall, after  
20 independent study of the data submitted to it by the Secre-  
21 tary and other data before it, certify to the Secretary a  
22 report and recommendations on the proposal together with  
23 all underlying data and a statement of the reasons or basis  
24 for the recommendations. The sixty-day period provided for  
25 herein may be extended by the advisory committee for



1 an additional thirty days if the advisory committee deems  
2 this necessary. Within thirty days after such certification,  
3 the Secretary may, after giving due consideration to all  
4 data before him, including such report, recommendations,  
5 underlying data and statement, by order publish a regulation  
6 establishing a tolerance for the pesticide chemical named  
7 in the proposal or exempting it from the necessity of a toler-  
8 ance which shall become effective upon publication. Regu-  
9 lations issued under this subsection shall upon publication be  
10 subject to paragraph (5) of subsection (d).

11 “(f) All data submitted to the Secretary or to an  
12 advisory committee in support of a petition under this section  
13 shall be considered confidential by the Secretary and by  
14 such advisory committee until publication of a regulation  
15 under paragraph (2) or (3) of subsection (d) of this  
16 section. Until such publication, such data shall not be  
17 revealed to any person other than those authorized by the  
18 Secretary or by an advisory committee in the carrying out  
19 of their official duties under this section.

20 “(g) Whenever the referral of a petition or proposal  
21 to an advisory committee is requested under this section, or  
22 the Secretary otherwise deems such referral necessary the  
23 Secretary shall forthwith appoint a committee of competent  
24 experts to review the petition or proposal and to make a  
25 report and recommendations thereon. Each such advisory

1 committee shall be composed of experts, qualified in the  
2 subject matter of the petition and of adequately diversified  
3 professional background selected by the National Academy  
4 of Sciences and shall include one or more representatives  
5 from land-grant colleges. The size of the committee shall  
6 be determined by the Secretary. Members of an advisory  
7 committee shall receive as compensation for their services  
8 a reasonable per diem, which the Secretary shall by rules  
9 and regulations prescribe, for time actually spent in the  
10 work of the committee, and shall in addition be reimbursed  
11 for their necessary traveling and subsistence expenses while  
12 so serving away from their places of residence. The mem-  
13 bers shall not be subject to any other provisions of law  
14 regarding the appointment and compensation of employees  
15 of the United States. The Secretary shall furnish the com-  
16 mittee with adequate clerical and other assistance, and shall  
17 by rules and regulations prescribe the procedure to be  
18 followed by the committee.

19 “(h) A person who has filed a petition or who has  
20 requested the referral of a proposal to an advisory committee  
21 in accordance with the provisions of this section, as well  
22 as representatives of the Department of Health, Education,  
23 and Welfare, shall have the right to consult with any  
24 advisory committee provided for in subsection (g) in con-  
25 nection with the petition or proposal.

1       “(i) (1) In a case of actual controversy as to the  
2 validity of any order under subsection (d) (5), (e), or  
3 (1) any person who will be adversely affected by such order  
4 may obtain judicial review by filing in the United States Court  
5 of Appeals for the circuit wherein such person resides or  
6 has his principal place of business, or in the United States  
7 Court of Appeals for the District of Columbia Circuit, within  
8 sixty days after the entry of such order, a petition praying  
9 that the order be set aside in whole or in part.

10       “(2) In the case of a petition with respect to an order  
11 under subsection (d) (5) or (e), a copy of the petition  
12 shall be forthwith served upon the Secretary, or upon any  
13 officer designated by him for that purpose, and thereupon  
14 the Secretary shall certify and file in the court a transcript  
15 of the proceedings and the record on which he based his  
16 order. Upon such filing, the court shall have exclusive juris-  
17 diction to affirm or set aside the order complained of in  
18 whole or in part. The findings of the Secretary with re-  
19 spect to questions of fact shall be sustained if supported by  
20 substantial evidence when considered on the record as a  
21 whole, including any report and recommendation of an  
22 advisory committee.

23       “(3) In the case of a petition with respect to an order  
24 under subsection (1), a copy of the petition shall be forth-  
25 with served upon the Secretary of Agriculture, or upon any



1 officer designated by him for that purpose, and thereupon the  
2 Secretary shall certify and file in the court a transcript of  
3 the proceedings and the record on which he based his order.  
4 Upon such filing, the court shall have exclusive jurisdiction  
5 to affirm or set aside the order complained of in whole or in  
6 part. The findings of the Secretary with respect to ques-  
7 tions of fact shall be sustained if supported by substantial  
8 evidence when considered on the record as a whole.

9 “(4) If application is made to the court for leave to  
10 adduce additional evidence, the court may order such addi-  
11 tional evidence to be taken before the Secretary of Health,  
12 Education, and Welfare or the Secretary of Agriculture, as  
13 the case may be, and to be adduced upon the hearing in such  
14 manner and upon such terms and conditions as to the court  
15 may seem proper, if such evidence is material and there were  
16 reasonable grounds for failure to adduce such evidence in the  
17 proceedings below. The Secretary of Health, Education,  
18 and Welfare or the Secretary of Agriculture, as the case may  
19 be, may modify his findings as to the facts and order by  
20 reason of the additional evidence so taken, and shall file with  
21 the court such modified findings and order.

22 “(5) The judgment of the court affirming or setting  
23 aside, in whole or in part, any order under this section  
24 shall be final, subject to review by the Supreme Court of  
25 the United States upon certiorari or certification as pro-

1 vided in section 1254 of title 28 of the United States  
2 Code. The commencement of proceedings under this sec-  
3 tion shall not, unless specifically ordered by the court to  
4 the contrary, operate as a stay of an order. The courts  
5 shall advance on the docket and expedite the disposition  
6 of all causes filed therein pursuant to this section.

7 “(j) The Secretary may, upon the request of any  
8 person who has obtained an experimental permit for a  
9 pesticide chemical under the Federal Insecticide, Fungi-  
10 cide, and Rodenticide Act or upon his own initiative, es-  
11 tablish a temporary tolerance for the pesticide chemical  
12 for the uses covered by the permit whenever in his judg-  
13 ment such action is deemed necessary to protect the public  
14 health, or may temporarily exempt such pesticide chemical  
15 from a tolerance. In establishing such a tolerance, the Sec-  
16 retary shall give due regard to the necessity for experi-  
17 mental work in developing an adequate, wholesome, and  
18 economical food supply and to the limited hazard to the  
19 public health involved in such work when conducted in  
20 accordance with applicable regulations under the Federal  
21 Insecticide, Fungicide, and Rodenticide Act.

22 “(k) Regulations affecting pesticide chemicals in or on  
23 raw agricultural commodities which are promulgated under  
24 the authority of section 406 (a) upon the basis of public  
25 hearings instituted before January 1, 1953, in accordance

1 with section 701 (e), shall be deemed to be regulations  
2 under this section and shall be subject to amendment or  
3 repeal as provided in subsection (m).

4 “(1) The Secretary of Agriculture, upon request of any  
5 person who has registered, or who has submitted an appli-  
6 cation for the registration of, an economic poison under the  
7 Federal Insecticide, Fungicide, and Rodenticide Act, and  
8 whose request is accompanied by a copy of a petition filed  
9 by such person under subsection (d) (1) with respect to  
10 a pesticide chemical which constitutes, or is an ingredient  
11 of, such economic poison, shall, within thirty days or within  
12 sixty days if upon notice prior to the termination of such  
13 thirty days the Secretary deems it necessary to postpone  
14 action for such period, on the basis of data before him,  
15 either—

16 “(1) certify to the Secretary of Health, Education,  
17 and Welfare that such pesticide chemical is useful for  
18 the purpose for which a tolerance or exemption is  
19 sought; or

20 “(2) notify the person requesting the certification  
21 of his proposal to certify that the pesticide chemical  
22 does not appear to be useful for the purpose for which  
23 a tolerance or exemption is sought, or appears to be  
24 useful for only some of the purposes for which a toler-  
25 ance or exemption is sought.



1 In the event that the Secretary of Agriculture takes the  
2 action described in clause (2) of the preceding sentence,  
3 the person requesting the certification, within one week  
4 after receiving the proposed certification, may either (A)  
5 request the Secretary of Agriculture to certify to the Secre-  
6 tary of Health, Education, and Welfare on the basis of the  
7 proposed certification; (B) request a hearing on the pro-  
8 posed certification or the parts thereof objected to; or (C)  
9 request both such certification and such hearing. If no such  
10 action is taken, the Secretary may by order make the  
11 certification as proposed. In the event that the action de-  
12 scribed in clause (A) or (C) is taken, the Secretary shall  
13 by order make the certification as proposed with respect to  
14 such parts thereof as are requested. In the event a hearing  
15 is requested, the Secretary of Agriculture shall provide  
16 opportunity for a prompt hearing. The certification of the  
17 Secretary of Agriculture as the result of such hearing shall  
18 be made by order and shall be based only on substantial  
19 evidence of record at the hearing and shall set forth detailed  
20 findings of fact. In no event shall the time elapsing between  
21 the making of a request for a certification under this sub-  
22 section and final certification by the Secretary of Agriculture  
23 exceed one hundred and sixty days. The Secretary shall  
24 submit to the Secretary of Health, Education, and Welfare  
25 with any certification of usefulness under this subsection

1 an opinion, based on the data before him, whether the tol-  
2 erance or exemption proposed by the petitioner reasonably  
3 reflects the amount of residue likely to result when the pesti-  
4 cide chemical is used in the manner proposed for the purpose  
5 for which the certification is made. The Secretary of Agricul-  
6 ture, after due notice and opportunity for public hearing,  
7 is authorized to promulgate rules and regulations for carrying  
8 out the provisions of this subsection.

9 “(m) The Secretary of Health, Education, and Welfare  
10 shall prescribe by regulations the procedure by which regu-  
11 lations under this section may be amended or repealed, and  
12 such procedure shall conform to the procedure provided in  
13 this section for the promulgation of regulations establishing  
14 tolerances, including the appointment of advisory committees  
15 and the procedure for referring petitions to such committees.

16 “(n) The provisions of section 303 (c) of the Federal  
17 Food, Drug, and Cosmetic Act with respect to the furnish-  
18 ing of guaranties shall be applicable to raw agricultural com-  
19 modities covered by this section.

20 “(o) *The Secretary of Health, Education, and Welfare*  
21 *shall by regulation require the payment of such fees as will*  
22 *in the aggregate, in the judgment of the Secretary, be suffi-*  
23 *cient over a reasonable term to provide, equip, and main-*  
24 *tain an adequate service for the performance of the Secretary's*  
25 *functions under this section. Under such regulations, the*

1 performance of the Secretary's services or other func-  
2 tions pursuant to this section, including any one or more  
3 of the following, may be conditioned upon the payment  
4 of such fees: (1) The acceptance of filing of a peti-  
5 tion submitted under subsection (d); (2) the promul-  
6 gation of a regulation establishing a tolerance, or an  
7 exemption from the necessity of a tolerance, under this  
8 section, or the amendment or repeal of such a regulation;  
9 (3) the referral of a petition or proposal under this sec-  
10 tion to an advisory committee; (4) the acceptance for filing  
11 of objections under subsection (d) (5); or (5) the certifi-  
12 cation and filing in court of a transcript of the proceed-  
13 ings and the record under subsection (i) (2). Such  
14 regulations may further provide for waiver or refund of  
15 fees in whole or in part when in the judgment of the Sec-  
16 retary such waiver or refund is equitable and not contrary  
17 to the purposes of this subsection."

18 SEC. 4. There are hereby authorized to be appropriated,  
19 out of any moneys in the Treasury not otherwise appro-  
20 priated, such sums as may be necessary for the purpose and  
21 administration of this Act.

22 SEC. 5. This Act shall take effect upon the date of its  
23 enactment, except that with respect to pesticide chemicals  
24 for which tolerances or exemptions have not been established  
25 under section 408 of the Federal Food, Drug, and Cosmetic



1 Act, the amendment to section 402 (a) of such Act made  
2 by section 2 of this Act shall not be effective—

3 (1) for the period of one year following the date  
4 of the enactment of this Act; or

5 (2) for such additional period following such period  
6 of one year, but not extending beyond two years after  
7 the date of the enactment of this Act, as the Secretary  
8 of Health, Education, and Welfare may prescribe on the  
9 basis of a finding that conditions exist which necessitate  
10 the prescribing of such additional period.

Passed the House of Representatives April 5, 1954.

Attest:

LYLE O. SNADER,

*Clerk.*









83<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION

# H. R. 7125

[Report No. 1635]

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## AN ACT

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To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticides chemicals in or on raw agricultural commodities.

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APRIL 6 (legislative day, APRIL 5), 1954

Read twice and referred to the Committee on Labor  
and Public Welfare

JUNE 25 (legislative day, JUNE 22), 1954

Reported with an amendment







# Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE  
(For Department Staff Only)

Issued July 7, 1954  
For actions of July 6, 1954  
83rd-2nd, No. 124

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HIGHLIGHTS: Senate passed bill to regulate pesticide chemicals. Sen. Mansfield defended current price support program. Sen. Murray suggested limitation on price support for big producers. Sen. Williams criticized USDA administration of drought relief. House passed bill revising food-drug title of U. S. Code. Rep. Hebert criticized USDA for holding cattle in La. and introduced measure to prevent their disposition.

## SENATE

1. PESTICIDE CHEMICALS. Passed as reported H. R. 7125, to provide for regulation of residues of pesticides and chemicals in or on raw agricultural commodities (pp. 9235-7).
2. FARM PROGRAM. H. R. 9680, the farm program bill as passed by the House, was referred to the Senate Agriculture and Forestry Committee (p. 9218).  
Sen. Langer inserted a Farmers Union local resolution on various aspects of the farm program (p. 9216).
3. PRICE SUPPORTS. Sen. Mansfield defended the present price support program and stated that its cost has been small compared with subsidies to business (pp. 9258-63).  
Sen. Murray defended the current price support program and suggested that its benefits to large producers be restricted (pp. 9222-3).
4. DROUGHT RELIEF. Sen. Williams criticized assistance to the King ranch in connection with the drought-relief program and inserted a letter from K. L. Scott on this matter (pp. 9263-4).
5. TRANSPORTATION. Passed with amendments S. 906, to establish the finality of contracts between the Government and common carriers of passengers and freight



subject to ICC regulation (pp. 9241-3).

6. FOREIGN AID. Agreed, as reported, to S. Res. 214, providing for a study of technical assistance programs by the Foreign Relations Committee (p. 9227). Sen. Smathers requested additional aid for Latin America (p. 9218).
7. RECLAMATION. Passed with amendment H. R. 4854, to authorize the Foster Creek project, Wash. (pp. 9223-4).
8. PERSONNEL. Discussed and passed over S. 3681, to aid in providing life insurance for Federal employees (p. 9241). Sen. Knowland announced that this bill is to be debated later in the week (p. 9251).  
Both Houses received from the Budget Bureau a report on operations under title X of the Classification Act, regarding management improvement and awards; to Post Office and Civil Service Committees (pp. 9216, 9385).
9. VOCATIONAL REHABILITATION. S. 2759, to extend and improve the Vocational Rehabilitation Act, was made the unfinished business (p. 9263).

#### HOUSE

10. APPROPRIATIONS. H. Doc. 460 (July 2) is a supplemental appropriation estimate of \$350,000 additional to the Labor Department to recruit additional Mexican farm laborers to harvest the cotton, vegetable, and citrus crops. The Budget Bureau letter states, "The recently intensified program...to apprehend and deport aliens is expected to curtail the number of Mexican farm laborers employed illegally and increase the demand for legally recruited workers."  
H. Doc. 459 (July 2) is a supplemental appropriation estimate of \$60,000 to GSA "to make the overall studies and to direct the establishment of" motor vehicle pools pursuant to H. R. 8753. The Budget Bureau letter states, "Ordinary operating and supervisory costs will be paid for by the agencies using these pools." The document also includes a Presidential recommendation for legislation to provide that "leased warehouse space temporarily in excess of operating requirements may be subleased to commercial organizations and the proceeds credited to the fund from which rental payments are made."
11. MINERALS; PUBLIC LANDS. The Interior and Insular Affairs Committee reported with amendment H. R. 8896, to provide for multiple mineral development of the same tracts of public lands (H. Rept. 2028) (p. 9386).
12. RECLAMATION. Passed without amendment S. J. Res. 165, to authorize the Secretary of the Interior to include the Glendo unit, Wyo. in the comprehensive plan for development of the water resources of the Missouri River Basin authorized by the Flood Control Acts of 1944 and 1946. No additional funds for the construction of the Missouri River Basin project are authorized by this measure. (pp. 9293-4). This measure will now be sent to the President.
13. WATER COMPACT. Passed without amendment S. 3336, to include Nevada and Utah among the States authorized to negotiate a compact for division of Columbia River Waters (p. 9291). This bill will now be sent to the President.
14. LAW REVISIONS. Passed without amendment bills to revise, codify, and enact into positive law parts of the U. S. Code as follows: H. R. 9728, title 21, "Food, Drugs, and Cosmetics" (including various provisions enforced by this Department regarding animals and poultry)(pp. 9295-317); H. R. 9729, "Census"



and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group; after deducting reasonable cost of sale and distribution.

SEC. 14. In the event all the tribal assets, susceptible to equitable and practicable distribution, distributed to the mixed-blood group under the provisions of section 10 hereof, are not, within 7 years from the effective date of this act, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 13 hereof, so as to effectively terminate Federal supervision over said assets, then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the net proceeds, or convey such assets to the persons entitled thereto as tenants in common.

SEC. 15. Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within 10 years from the date of enactment of this act, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said 10-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

SEC. 16. (a) When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 10 hereof, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of this act, notwithstanding anything herein contained to the contrary.

(b) Prior to the removal of restrictions in accordance with the provisions of subsection (a) hereof on land owned by more than one person, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in

which event a trust patent or restricted deed shall be issued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That before a sale any one or more of the owners may elect to purchase the other interests in the land, or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

SEC. 17. No distribution of the assets made under the provisions of this act shall be subject to any Federal or State income tax: *Provided*, That so much of any cash distribution made hereunder as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of this act be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of this act shall be exempt from property taxes for a period of 7 years from the date of enactment of this act, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance: *Provided*, That the mortgaging, hypothecation, granting of a right-of-way, or other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After 7 years from the date of enactment of this act, all property distributed to the mixed-blood members of the tribe under the provisions of this act, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any valuation for purposes of Federal income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to this act.

SEC. 18. The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply.

SEC. 19. Nothing in this act shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe.

SEC. 20. Nothing in this act shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved.

SEC. 21. Nothing in this act shall abrogate any water rights of the tribe or its members.

SEC. 22. For the purposes of this act, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated.

SEC. 23. Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services per-

formed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

SEC. 24. Within 3 months after the date of enactment of this act, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof self-supporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members. The tribal business committee, representing the full-blood group shall, through the Secretary of the Interior, make a full and complete annual progress report to the Congress of its activities, and of the expenditures authorized under this act.

SEC. 25. Nothing in this act shall affect the status of the members of the tribe as citizens of the United States, or shall affect their rights, privileges, immunities, and obligations as such citizens.

SEC. 26. The Secretary shall have authority to execute such patents, deeds, assignments, release, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out the provisions of this act, or to establish a marketable and recordable title to any property disposed of pursuant to this act.

SEC. 27. The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of this act, and may, in his discretion, provide for tribal or group referendums on matters pertaining to management or disposition of tribal or group assets.

SEC. 28. Whenever any action pursuant to the provisions of this act requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups.

SEC. 29. All acts, or parts of acts, inconsistent with this act are hereby repealed insofar as they affect the tribe or its members.

SEC. 30. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and fullblood members thereof; and for the termination of Federal supervision over the property of the mixed-blood members of said tribe; to provide a development program for the fullblood members of said tribe; and for other purposes."

#### AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT

The bill (H. R. 7125) to amend the Federal Food, Drug, and Cosmetic Act, with respect to residues of pesticides and chemicals in or on raw agricultural commodities was announced as next in order.



The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. HENDRICKSON. Mr. President, reserving the right to object—and I shall not object, because I think this bill proposes very good legislation—I think it is so important that there should be an explanation for the purpose of the RECORD.

The PRESIDING OFFICER. An explanation is requested.

Mr. PURTELL. Mr. President, I am very happy to give a brief explanation of the bill.

The primary purpose of the bill is to assure greater protection of the public health by improving, simplifying, and speeding up the procedure under the Federal Food, Drug, and Cosmetic Act, for regulating the amount of residue which may remain on raw agricultural commodities after use of pesticide chemicals.

Pesticide chemicals are substances such as insecticides, fungicides, and weedkillers used in the production, storage, and transportation of food for the purpose of controlling insects, plant diseases, weeds, and other pests.

A primary objective in drafting the bill was to develop legislation that would provide for prompt administrative action to permit effective use of pesticide chemicals without hazard to the public health; legislation that would be safe for consumers and practical for producers.

The committee knows of no opposition to the bill. All interested parties are agreed as to the need for the bill.

We held hearings, and everyone who appeared at the hearings was very much interested in the passage of the bill.

The committee added an amendment to the House bill. The amendment was adopted at the request of the Department of Health, Education, and Welfare.

The committee amendment, adopted at the request of the Department of Health, Education, and Welfare, authorizes the Secretary to establish a schedule of fees, to be charged applicants requesting establishment of tolerances or exemptions from tolerances. The Secretary would have discretion in fixing the fees so as to make the service provided under this legislation as nearly self-supporting as possible.

I think it is fair to say that when that subject was discussed some of the witnesses who appeared stated that they did not object to the idea of fees so long as it was not centered in this particular field, if that was the policy of the Department.

I point out that testimony before the committee on this matter indicated that authorization for collecting fees presently is in effect in the Food and Drug Administration in the case of services rendered in connection with the certification of certain antibiotic drugs, in the case of all charcoal colors intended for use in food, in the case of all preparations of insulin, and in the case of sea-food service. Accordingly, the committee amendment would merely extend a precedent which already has been established.

Mr. MORSE. Mr. President, the title of the bill shows that it belongs under

the head of protecting the health of the American people with respect to food and drugs which they consume. I wish that members of the committee would have the staff of the committee look into information which was given to me the other day, and which I find very disturbing, if true. I do not verify it, although I am inclined to think that there is probably great cause for concern about it.

The representation was made to me the other day that the American people are not being protected to the extent they have a right to expect to be protected, from the standpoint of the inspection of poultry which is placed on the market. It is said that the same protection is not provided by the inspection of poultry as is provided in the case of other meats. If that be true, I think remedial action should be taken at once. The particular individual to whom I refer, who knows what he is talking about so far as his knowledge of the industry is concerned, claims that the American people do not have the protection from diseased poultry which might be placed on the market that they should have.

I therefore recommend that some investigation be made at once by the professional staff of the appropriate committee to inform us as to what shortcomings, if any, there may be in regard to the inspection of slaughtered poultry placed on the market for human consumption.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. HOLLAND. I think this is an excellent bill, but I think the RECORD should contain the showing, which I believe is a good showing, contained in the committee report on the bill, indicating the improvements over existing law. I ask that that part of the report, including all of page 4 and down through the second paragraph on page 5, under the heading "Improvements Over Existing Law" be printed in the RECORD at this point as a part of my remarks.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

#### IMPROVEMENTS OVER EXISTING LAW

The principal respects in which this bill would change and improve existing law are—

1. A specific method for controlling the residue of pesticide chemicals which may remain in or on raw agricultural commodities is set up which is distinct from that controlling other poisonous or deleterious substances which are used in, or remain in, processed, fabricated, and manufactured food. In this way, recognition is given to the peculiar economic, agricultural, and public health problems which are important in the regulation of pesticide chemicals. Unlike many other chemicals, pesticide chemicals are necessary instruments of agriculture in producing and expanding our food supply and are comprehensively regulated by the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act.

2. The determination of questions of agricultural usefulness and probable residue levels involved in the establishment of tolerances, is made a function of the Department of Agriculture; while the determination of questions of a public health nature remains a function of the Department of Health, Education, and Welfare. In this way, a more

logical grouping of governmental functions is effected than under existing law which casts the responsibility for determining agricultural questions as well as public health questions upon the Department of Health, Education, and Welfare.

3. Before any pesticide-chemical residue may remain in or on a raw agricultural commodity, scientific data must be presented to show that the pesticide-chemical residue is safe from the standpoint of the food consumer. The burden is on the person proposing the tolerance or exemption to establish the safety of such pesticide-chemical residue.

4. Specific time limits for informal administrative action in establishing tolerances are prescribed to avoid the adverse consequences of inaction and protracted delay. Promptness is vital in this area of regulation to all concerned.

5. Provision is made for the appointment of independent committees of scientific experts selected by the National Academy of Sciences to study proposed regulations establishing tolerances for pesticide chemicals and to make recommendations thereon to the Department of Health, Education, and Welfare.

6. The procedure prescribed for establishing tolerances emphasizes informal proceedings rather than the formal public hearing type of proceedings. This is accomplished in two ways: First, the bill sets up a procedure whereby the manufacturer or formulator most directly concerned with the establishment of a tolerance for a particular pesticide chemical has the right to initiate the proceedings for a tolerance on that chemical by filing a petition. Second, the bill provides for the initial setting of tolerances without a formal public hearing, limiting such hearings to issues which may remain in dispute at the conclusion of the informal proceedings. Existing law requires a formal public hearing before any tolerance can be established and such a proceeding can be initiated only upon the request of a substantial segment of the industry or upon the initiative of the Government.

7. Where the informal procedures do not produce a satisfactory tolerance or exemption the rights of all concerned to a full and fair hearing on the disputed issues are preserved.

8. Enforcement of the adulteration provisions relating to raw agricultural commodities bearing pesticide chemicals is simplified and made more effective, since, under the bill, authority to establish tolerances extends to pesticide chemicals not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, as well as pesticide chemicals which are known to be poisonous or deleterious.

9. Provision is made for the exemption of pesticide chemicals from the requirements of a tolerance in cases where tolerances are not necessary to protect the public health and for the establishment of temporary tolerances for those pesticide chemicals which are used in or on raw agricultural commodities under experimental permits issued by the Department of Agriculture.

Mr. HENDRICKSON. Mr. President, I thank the distinguished Senator from Connecticut for his able and enlightening explanation. I think he has made a fine record for the bill.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare with an



amendment, on page 18, after line 19, to insert:

(o) The Secretary of Health, Education, and Welfare shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Secretary, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Secretary's functions under this section. Under such regulations, the performance of the Secretary's services or other functions pursuant to this section, including any one or more of the following, may be conditioned upon the payment of such fees: (1) The acceptance of filing of a petition submitted under subsection (d); (2) the promulgation of a regulation establishing a tolerance, or an exemption from the necessity of a tolerance, under this section, or the amendment or repeal of such a regulation; (3) the referral of a petition or proposal under this section to an advisory committee; (4) the acceptance for filing of objections under subsection (d) (5); or (5) the certification and filing in court of a transcript of the proceedings and the record under subsection (1) (2). Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Secretary such waiver or refund is equitable and not contrary to the purposes of this subsection.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

#### CONVEYANCE BY THE TENNESSEE VALLEY AUTHORITY OF CERTAIN PUBLIC-USE TERMINAL PROPERTIES

The joint resolution (S. J. Res. 170) to approve the conveyance by the Tennessee Valley Authority of certain public-use terminal properties now owned by the United States was announced as next in order.

The PRESIDING OFFICER (Mr. BUTLER in the chair). Is there objection to the present consideration of the joint resolution?

Mr. MORSE. Mr. President, although there was a satisfactory explanation given in the Public Works Committee, nevertheless I think it would be helpful to have an explanation of the joint resolution in the Record at this point.

Mr. GORE. Mr. President, from the beginning, the Tennessee Valley Authority has undertaken to develop navigation on the Tennessee River. In pursuit of this objective the TVA has constructed on the Tennessee River certain dock facilities which for the most part are operated under contract by private persons. As navigation has developed, the business at certain of these docks has been built up to the point that the dock facilities can now be operated by private enterprise. The bill gives authority to the Tennessee Valley Authority to sell these properties at the depreciated book value thereof.

The joint resolution has been approved by the TVA and by the Bureau of the Budget, and has been unanimously reported by the Public Works Committee.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution (S. J. Res. 170) was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

*Resolved, etc.,* That the Congress, pursuant to section 4 (k) (b) of the Tennessee Valley Authority Act of 1933, as amended (55 Stat. 599-600; 16 U. S. C. 831c (k) (b)), hereby approves the conveyance by the Tennessee Valley Authority in the name of the United States, by deed, lease, or otherwise, for the purposes of said section 4 (k) (b) and on the basis of the fair sale or rental value determined by the Tennessee Valley Authority, of the public-use terminal properties now owned by the United States and in the custody of the Tennessee Valley Authority at Knoxville, Chattanooga, and Harriman, Tenn., and Decatur and Guntersville, Ala.

#### CONVEYANCE BY QUITCLAIM DEED OF CERTAIN LAND TO THE STATE OF TEXAS

The bill (H. R. 7913) to convey by quitclaim deed certain land to the State of Texas was announced as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent to have printed in the Record at this point a statement in explanation of the bill.

There being no objection, the statement was ordered to be printed in the Record, as follows:

##### STATEMENT BY SENATOR JOHNSON OF TEXAS

This bill authorizes the Federal Government to sell to the State of Texas a tract of land which the Government does not need and which Texas wants to use for a State park, designated as Atlanta State Park.

The land involved, not to exceed 200 acres, was originally acquired by the Federal Government for use in connection with the operation of Texarkana dam and reservoir project. The bill permitting its conveyance by quitclaim deed to the State of Texas has been considered by the Department of the Army, which has no objection to its enactment.

The rights of the Federal Government are fully protected under terms of the bill.

The land would be sold at a fair market value as determined by the Secretary of the Army. In no case would the selling price be less than the Government paid for it.

Title would revert to the United States if the State should not start construction within 5 years or if the property should cease to be used for park and recreational purposes for 2 successive years.

Title to the subsurface lands and the rights to the mineral and other resources contained therein would continue to be vested in the United States Government.

This is an ideal site for the public park and recreational facilities which the State of Texas proposes to build. Those facilities are needed in the area of the Texarkana dam and reservoir.

I urge favorable consideration of this bill in order that the State can proceed with plans for financing the proposed development.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill (H. R. 7913) to convey by quitclaim deed certain land to the State of Texas was considered ordered to a third reading, read the third time, and passed.

#### DEPOSIT OF SAVINGS OF ENLISTED MEMBERS OF THE ARMED FORCES

The bill (S. 3284) to provide for the deposit of savings of enlisted members of the Army, Navy, Air Force, and Marine Corps, and for other purposes, was amended as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. HENDRICKSON. Mr. President, I ask unanimous consent that a statement which I have prepared in relation to the bill be incorporated in the Record at this point.

There being no objection, the statement was ordered to be printed in the Record, as follows:

##### STATEMENT BY SENATOR HENDRICKSON

The purpose of S. 3284 is to provide uniform authority for the deposits of savings by enlisted members of the Army, Navy, Air Force, and Marine Corps.

With the exception of one provision, this bill constitutes a reenactment of the existing permanent law on savings deposits. And that one provision has already been extended to the Army and Air Force in the form of temporary legislation which has been in effect since December 18, 1942. This temporary authority expires July 1, 1954.

The change in the permanent law concerns the time when the deposits may be withdrawn by the enlisted man. Under the permanent law the deposits may be withdrawn only upon final discharge. The temporary law for the Army and Air Force has provided that the service secretaries may determine the time when the deposits can be withdrawn. The bill extends such authority to all the services in the form of permanent law.

It is desirable that the secretaries have the permanent authority to prescribe the time for holding the deposits, since enlisted men are more likely to make use of the program if they know the funds may be withdrawn in the event of personal emergency.

Basically the bill provides that enlisted men may deposit sums of at least \$5 with designated officers of the military services, and will receive interest at the rate of 4 percent per year for sums deposited for a period of 6 months or longer. The deposits will accrue simple and not compound interest. The secretaries will permit the interest to be withdrawn only when the deposit itself is withdrawn. Such has been the practice for some time under existing law. The deposits and interest would be exempt from liability for the enlisted man's debts, and would not be subject to forfeiture for sentence of a court-martial. The deposits would be held for such periods as prescribed by the service secretaries.

This legislation is desirable as a means of encouraging thrift among the enlisted personnel of the services.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill (S. 3284) to provide for the deposit of savings of enlisted members of the Army, Navy, Air Force, and Marine Corps, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

*Be it enacted, etc.,* That any enlisted member of the Army, Navy, Air Force, or Marine Corps, may deposit his savings, in sums not less than \$5, with any branch, office, or officer of that armed force designated by the



Secretary of the military department concerned which shall furnish him a deposit book in which shall be entered the name of the officer receiving such deposit and of the enlisted member and the amount, date, and place of such deposit. Any amount heretofore or hereafter deposited shall be held during such period of his service as may be prescribed by the Secretary of the department concerned; shall be accounted for in the same manner as other public funds; shall be deposited in the Treasury of the United States and kept as separate funds known respectively as "Pay of the Army, Deposit Fund"; "Pay of the Navy, Deposit Fund"; "Pay of the Air Force, Deposit Fund"; and "Pay of the Marine Corps, Deposit Fund"; repayment of which to the enlisted member, or to his heirs or representatives, shall be made out of the respective funds created by said deposits.

SEC. 2. For any sums not less than \$5 so deposited for a period of 6 months, or longer, the enlisted member, upon final discharge or at such time or times prior thereto as may be prescribed by the Secretary of the department concerned, shall be paid interest at the rate of 4 percent per annum.

SEC. 3. Deposits and interest thereon shall be exempt from liability for such enlisted member's debts, including any indebtedness to the United States or to any of its instrumentalities, and shall not be subject to forfeiture by sentence of court-martial.

SEC. 4. The following are hereby repealed: Section 1305, Revised Statutes, as amended; section 1306, Revised Statutes, as amended; the act of December 18, 1942 (ch. 765; 56 Stat. 1057, 1058), as amended; the act of February 9, 1889 (ch. 119; 25 Stat. 657); the act of June 29, 1906 (ch. 3590; 34 Stat. 579); the act of February 28, 1931 (ch. 326; 46 Stat. 1448); and the act of July 17, 1953 (ch. 219; 67 Stat. 176).

#### COMPUTATION OF REENLISTMENT BONUSES FOR MEMBERS OF THE UNIFORMED SERVICES

The bill (S. 3539) to further amend title II of the Career Compensation Act of 1949, as amended, to provide for the computation of reenlistment bonuses for members of the uniformed services was announced as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. HENDRICKSON. Mr. President, I ask unanimous consent to have printed in the RECORD at this point an explanation of the bill.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

##### STATEMENT BY SENATOR HENDRICKSON

Members of the Congress have for many months expressed concern over the difficulty being encountered in all our military services concerning reenlistments.

The loss of trained men seriously affects the day-to-day competence of our forces. Also, it creates a major training problem. And finally it costs the Government great sums of money which could be saved if the thousands of trained men who annually leave the services could be induced to remain on a career basis.

At the present time reenlistment bonuses are paid according to a flat scale, dependent upon the number of years of the new contract. For example, a 2-year reenlistment receives a \$40 bonus, whereas a 6-year reenlistment receives \$360. The present scales do not provide for any selectivity in the payment of the bonus in that the private draws the same dollar bonus as the master sergeant, or chief petty officer.

What the bill proposes to do is to alter the scale and the timing of these payments. Instead of the present flat scale the bonus will be computed according to the pay grade of the individual as well as to the number of years for which he signs up. In principle, the highest proportional scale is paid for the first reenlistment and is graduated down through succeeding reenlistments until 20 years have been served.

Under existing law the cumulative amount of reenlistment bonus payments is \$1,440. Under the bill this maximum is extended to \$2,000.

As to the cost of the bill, the evidence quite clearly showed that if the projected reenlistment total for next year remains at 244,000 persons it will cost approximately \$68 million more to pay the bonus according to the new scale than it would cost to pay the bonus to the same number under the old scale. However, if the reenlistment rate can be increased by approximately 4.5 percent the amount saved in retraining of replacements would compensate for the increased bonus and from that point on a potential saving would accrue to the Government.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill (S. 3539) to further amend title II of the Career Compensation Act of 1949, as amended, to provide for the computation of reenlistment bonuses for members of the uniformed services was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

*Be it enacted etc., That section 207 of the Career Compensation Act of 1949 (ch. 681, 63*

Stat. 811), as amended (37 U. S. C. 238), is further amended by designating subsection "(e)" as subsection "(f)" and by inserting a new subsection (e), as follows:

"(e) This section does not apply to—

"(1) any person who originally enlists in a uniformed service after the date of enactment of this amendatory act;

"(2) any member of a uniformed service in active Federal service on the date of enactment of this amendatory act who elects to be covered by section 208 of this act and who is otherwise eligible for the benefits of that section;

"(3) any person who—

"(A) was discharged or released from active duty from a uniformed service not more than 90 days before the date of enactment of this amendatory act,

"(B) reenlists in that service within 90 days after the date of his discharge or release from active duty,

"(C) elects to be covered by section 208 of this act, and

"(D) is otherwise eligible for the benefits of that section; or

"(4) any person covered by clause (2) or (3) who at any time elects, or has elected, to be covered by section 208 of this act."

SEC. 2. The Career Compensation Act of 1949, as amended, is further amended by inserting the following new section at the end of title II:

"SEC. 208. (a) Subject to subsections (b) and (c) of this section, a member of a uniformed service who reenlists in the regular component of the service concerned within 90 days after the date of his discharge or release from active duty, and who is not covered by section 207 of this act, is entitled to a bonus computed according to the following table:

Reenlistment Involved <sup>1</sup>	(Column 1) Take	(Column 2) Multiply by
First.....	Monthly basic pay to which the member was entitled at the time of discharge. <sup>2</sup>	Number of years specified in reenlistment contract, or six, if none specified. <sup>3</sup>
Second.....	Two-thirds of the monthly basic pay to which the member was entitled at the time of discharge. <sup>4</sup>	Number of years specified in reenlistment contract, or six, if none specified. <sup>3</sup>
Third.....	One-third of the monthly basic pay to which the member was entitled at the time of discharge. <sup>5</sup>	Number of years specified in reenlistment contract, or six, if none specified. <sup>3</sup>
Fourth (and subsequent).....	One-sixth of the monthly basic pay to which the member was entitled at the time of discharge. <sup>5</sup>	Number of years specified in reenlistment contract, or six, if none specified. <sup>3</sup>

<sup>1</sup> Any reenlistment when a bonus was not authorized is not counted.

<sup>2</sup> Two-thirds of the monthly basic pay in the case of a member in pay grade E-1 at the time of discharge.

<sup>3</sup> On the sixth anniversary of an indefinite reenlistment, and on each anniversary thereafter, the member is entitled to a bonus equal to one-third of the monthly basic pay to which he is entitled on that anniversary date.

<sup>4</sup> No bonus may be paid to a member in pay grade E-1 or E-2 at the time of discharge.

<sup>5</sup> No bonus may be paid to a member in pay grade E-1, E-2, or E-3 at the time of discharge.

"(b) No bonus may be paid to a member who reenlists—

"(1) during his prescribed period of basic recruit training; or

"(2) after completing a total of 20 years of active Federal service.

The bonus payable to a member who reenlists before completing a total of 20 years of active Federal service, but who will under that reenlistment complete more than 20 years of such service, is computed by using as a multiplier only that number of years which, when added to his previous service, totals 20 years.

"(c) The cumulative amount which may be paid to a member under this section, or under this section and any other provision of law authorizing reenlistment bonuses, may not exceed \$2,000.

"(d) An officer of a uniformed service who reenlists in that service within 90 days after his release from active duty as an officer is entitled to a bonus computed according to the table in subsection (a), if he served in an enlisted status in that service immediately before serving as an officer. For the

purpose of this subsection, the monthly basic pay (or appropriate fraction if the member received a bonus for a prior reenlistment) of the grade in which the member is enlisted (computed in accordance with the cumulative years of service of the member) is to be used in column 1 of the table set forth under subsection (a) instead of the monthly basic pay to which he was entitled at the time of his release from active duty as an officer.

"(e) In this section, 'reenlistment' means—

"(1) an enlistment in a regular component of a uniformed service after compulsory or voluntary active duty in that service; or

"(2) a voluntary extension of an enlistment for 2 or more years.

"(f) Under such regulations as may be approved by the Secretary of Defense, or by the Secretary of the Treasury with respect to Coast Guard personnel, a member of a uniformed service who voluntarily, or because of his own misconduct, does not complete the term of enlistment for which he was paid a bonus under this section shall refund that percentage of the bonus that the







leasing laws, on the same tracts of the public lands (pp. 9577, 9581-93).

S. 2380, to amend various provisions of the mineral leasing laws so as to encourage exploration and development of the oil and gas reserves of the public domain (pp. 9593, 9596-8).

S. 2381, to increase the amount of public land that any one person, etc., may hold under an oil and gas lease (pp. 9598-9).

8. STOCKPILING. The Minerals, Materials, and Fuels Economic Subcommittee submitted a report (June 23) containing findings and recommendations to the Interior and Insular Affairs Committee, pursuant to S. Res. 143, directing a study of the accessibility of strategic and critical materials (including agricultural products) to the U. S. The following is an excerpt from the report: "Obviously if we adopt free trade we should abandon our entire price support program. If we do not do this, we would be attempting to support farm prices all over the world at the expense of the American taxpayer." A committee print of this report is available in the Legislative Reporting Staff for lending purposes.

#### HOUSE

9. UNEMPLOYMENT COMPENSATION. Passed, 309-36, without amendment H. R. 9709, to extend and amend the unemployment-compensation program (pp. 9490-522). The bill contains a provision which is described as follows in the committee report:  
"H. R. 9709 provides for unemployment insurance for Federal civilian workers, including Puerto Rico or the Virgin Islands, and elsewhere, if citizens of the United States. (Nearly all of the exceptions to coverage are identical with the categories of Federal workers excluded from the Social Security Act for purposes of the old-age and survivors insurance.) Unemployment compensation will be payable to such Federal workers who are unemployed after December 31, 1954. A Federal worker's rights to benefits are to be determined under the unemployment-compensation law of the State to which his Federal services and wages are assigned. Usually, this will be the State in which the worker had his official station when he became unemployed, or, if he has been in Foreign Service, the State in which he resides when he files his claim. Compensation will not be paid for the period with respect to which accrued annual leave is paid upon separation."
10. RESEARCH; FORESTRY; FARM LOANS. The Agriculture Committee reported without amendment S. 2367, to authorize USDA research appropriations to be available for accomplishing their purpose by contract (this authority is now limited to research under the Research and Marketing Act ) (H. Rept. 2100); and H. R. 9345, to grant the consent and approval of Congress to the Southeastern Interstate Forest Fire Protection Compact (H. Rept. 2099); and with amendment S. 3487, to authorize the Central Bank for Cooperatives and the regional banks for cooperatives to issue consolidated debentures (H. Rept. 2101) (p. 9544).  
The Committee also ordered reported (but did not actually report ) H. R. 6393, to grant the consent and approval of Congress to the South Central Interstate Forest Fire Protection Compact (p. D798).
11. PESTICIDES. Concurred in the Senate amendment to H. R. 7125, to amend the Federal Food Drug, and Cosmetic Act so as to improve, simplify, and speed up the procedure thereunder in regulating the amount of residue which may remain on raw agricultural commodities after use of pesticide chemicals (p. 9522). This bill will now be sent to the President.



12. TRADE AGREEMENTS. Both Houses received the President's message transmitting a report on the inclusion of escape clauses in existing trade agreements; to House Ways and Means Committee and Senate Finance Committee (H. Doc. 470) (pp. 9489, 9547).
13. TRAVEL. Passed as reported H. R. 179, to provide for payment of expenses of round trip transportation of Federal employees and their immediate families, but not household effects from posts of duty outside continental U. S. (pp. 9489, 9527). This bill had earlier been reported with amendments by the Government Operations Committee (H. Rept. 2096) (p. 9544). As passed, the bill allows payment for round trip travel of the employees and their immediate families from their posts of duty outside the continental U. S. to places of actual residence at time of appointment or transfer to such overseas posts of duty and who are returning thereto for the purpose of taking leave prior to serving another tour of duty at the same or some other post outside continental U. S.
14. VOCATIONAL REHABILITATION. Passed, 347-0, H. R. 9640, to extend and improve services under the Vocational Rehabilitation Act (pp. 9488-89). Vacated earlier passage of this bill, and passed S. 2759, a similar bill, after amending it to contain the language of H. R. 9640. House and Senate conferees were appointed. (pp. 9523-7, 9607-11.)
15. FCA AUDIT REPORT. Received GAO's audit report on the FCA for the 1953 fiscal year (p. 9544).
16. HOUSING LOANS. The conferees were authorized until midnight July 10 to file a conference report on H. R. 7839, which includes a provision continuing the rural-housing loan program (p. 9541).
17. VIRGIN ISLANDS. The conferees were authorized until midnight July 10 to file a conference report on S. 3378, to revise the Virgin Islands Organic Act (which includes a provision relating to the importation of diseased animals) (p. 9541).
18. PERSONNEL. The Post Office and Civil Service Committee was granted permission until midnight July 10 to file a report on H. R. 9836, the Federal employees' pay and reclassification bill (p. 9541).
19. RECLAMATION; ELECTRIFICATION. House conferees were appointed on H. R. 4854, to authorize Interior to construct the Foster Creek division, Chief Joseph Dam project, Wash. (p. 9528). Senate conferees have not yet been appointed.
20. ADJOURNED until Mon., July 12 (p. 9544). The Legislative Program for next week, as announced by Rep. Arends: The House will consider bills to authorize increase in interest rates on direct and insured loans under the Bankhead-Jones Act, etc., transfer surplus CCC hay and pasture seeds to FS and other land administering agencies, and, if rules are granted, bills to increase limit on individual water facilities loans and expand area of coverage to entire country, and health reinsurance (pp. 9540-1).

#### BILLS INTRODUCED

21. MONOPOLY. H. R. 9834, by Rep. Hoffman, Mich., to provide for taking the Fed. Government out of competition with private enterprise; to Government Operations Committee (p. 9546).



Watts	Wigglesworth	Winstead
Westland	Williams, Miss.	Wolcott
Whitten	Williams, N. Y.	Wolverson
Wickersham	Wilson, Calif.	Young
Widnall	Wilson, Ind.	Younger

## NOT VOTING—83

Albert	Harris	Perkins
Allen, Ill.	Harrison, Va.	Pilcher
Angell	Harrison, Wyo.	Powell
Bentsen	Harvey	Preston
Berry	Heller	Radwan
Bonin	Hillings	Rayburn
Bonner	Hinshaw	Regan
Bow	Johnson, Calif.	Richards
Buckley	Kee	Roberts
Busbey	Keogh	Robeson, Va.
Camp	Kersten, Wis.	Roosevelt
Carnahan	Kilday	Sadlak
Chatham	Klein	Scott
Condon	Landrum	Shafer
Coon	Lanham	Short
Cotton	Lantaff	Shufford
Curtis, Nebr.	Long	Sullivan
Davis, Tenn.	Lucas	Sutton
Dingell	Lyle	Taylor
Dodd	McGregor	Thompson, La.
Dowdy	Metcaif	Thompson, Tex.
Durham	Morano	Weichel
Ellsworth	Moulder	Wharton
Evins	Norblad	Wheeler
Fallon	Passman	Willis
Feighan	Patman	Wilson, Tex.
Fisher	Patten	Yorty
Frazier	Patterson	

So the motion to recommit was rejected.

The Clerk announced the following pairs:

## On this vote:

Mr. Keogh for, with Mr. Taylor against.  
 Mr. Klein for, with Mr. Ellsworth against.  
 Mr. Metcaif for, with Mr. McGregor against.  
 Mr. Moulder for, with Mr. Berry against.  
 Mr. Roosevelt for, with Mr. Harvey against.  
 Mr. Powell for, with Mr. Morano against.  
 Mr. Dodd for, with Mr. Allen of Illinois against.  
 Mr. Feighan for, with Mr. Sadlak against.  
 Mr. Heller for, with Mr. Wheeler against.  
 Mr. Dingell for, with Mr. Lantaff against.  
 Mrs. Sullivan for, with Mr. Harrison of Virginia against.  
 Mrs. Kee for, with Mr. Camp against.  
 Mr. Buckley for, with Mr. Landrum against.  
 Mr. Carnahan for, with Mr. Lucas against.  
 Mr. Perkins for, with Mr. Willis against.  
 Mr. Condon for, with Mr. Regan against.  
 Mr. Fallon for, with Mr. Chatham against.  
 Mr. Patten for, with Mr. Bonner against.  
 Mr. Yorty for, with Mr. Bow against.  
 Mr. Angell for, with Mr. Short against.

## Until further notice:

Mr. Bonin with Mr. Lyle.  
 Mr. Kersten of Wisconsin with Mr. Long.  
 Mr. Weichel with Mr. Thompson of Louisiana.  
 Mr. Johnson of California with Mr. Shuford.  
 Mr. Hillings with Mr. Harris.  
 Mr. Hinshaw with Mr. Preston.  
 Mr. Norblad with Mr. Lanham.  
 Mr. Curtis of Nebraska with Mr. Roberts.  
 Mr. Cotton with Mr. Frazier.  
 Mr. Patterson with Mr. Fisher.  
 Mr. Radwan with Mr. Wilson of Texas.  
 Mr. Wharton with Mr. Pilcher.  
 Mr. Shafer with Mr. Kilday.  
 Mr. Busbey with Mr. Albert.  
 Mr. Coon with Mr. Evins.  
 Mr. Harrison of Wyoming with Mr. Dowdy.  
 Mr. Scott with Mr. Passman.

Mr. GUBSER and Mr. BROOKS of Texas changed their votes from "aye" to "nay."

The result of the vote was announced as above recorded.

The doors were opened.

The SPEAKER. The question is on the passage of the bill.

Mr. McCORMACK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 309, nays 36, answered "present" 2, not voting 87, as follows:

[Roll No. 99]

## YEAS—309

Abbt	Dorn, S. C.	McDonough
Adair	Doyle	McIntire
Addonizio	Eberharter	McVey
Allen, Calif.	Edmondson	Machrowicz
Andersen, H. Carl	Elliott	Mack, Ill.
Andresen, August H.	Engle	Mack, Wash.
Arends	Fenton	Madden
Ashmore	Fernandez	Magnuson
Aspinall	Fine	Mahon
Auchincloss	Fino	Mailliard
Ayres	Fogarty	Marshall
Bailey	Ford	Martin, Iowa
Baker	Fountain	Meader
Barrett	Frelinghuysen	Merrill
Bates	Friedel	Morrow
Battle	Fulton	Miller, Calif.
Beamer	Gamble	Miller, Kans.
Becker	Garmatz	Miller, Md.
Beicher	Gary	Miller, Nebr.
Bender	Gathings	Miller, N. Y.
Bennett, Fla.	Gavin	Mollohan
Bennett, Mich.	George	Morgan
Bentley	Goodwin	Morrison
Betts	Gordon	Moss
Bishop	Graham	Multer
Blatnik	Granahan	Mumma
Boggs	Green	Murray
Boland	Gregory	Natcher
Bolling	Gross	Neal
Bolton, Frances P.	Gwinn	Neison
Bolton, Oliver P.	Hagen, Calif.	Nicholson
Bosch	Hagen, Minn.	Oakman
Bowler	Hale	O'Brien, Ill.
Boykin	Halley	O'Brien, Mich.
Bramblett	Hallick	O'Brien, N. Y.
Bray	Hand	O'Hara, Ill.
Brooks, La.	Harden	O'Hara, Minn.
Brooks, Tex.	Hardy	O'Konski
Brown, Ga.	Harrison, Nebr.	O'Neill
Brown, Ohio	Hart	Osmer
Brownson	Hays, Ark.	Ostertag
Broyhill	Hays, Ohio	Pelly
Buchanan	Hébert	Frost
Budge	Heseltin	Philbin
Burdick	Hess	Phillips
Bush	Hestand	Pillion
Byrd	Hill	Poage
Byrne, Pa.	Hilleison	Poff
Byrnes, Wis.	Hoeven	Polk
Campbell	Hoffman, Ill.	Price
Canfield	Holifield	Priest
Cannon	Holmes	Prouty
Carrigg	Holt	Rabaut
Cederberg	Holtzman	Rains
Celler	Hope	Ray
Chelf	Horan	Rayburn
Chenoweth	Hosmer	Reams
Chiperfield	Howell	Reece, Tenn.
Chudoff	Hruska	Reed, Ill.
Church	Hunter	Reed, N. Y.
Clardy	Hyde	Rees, Kans.
Clevenger	Jackson	Rhodes, Ariz.
Cole, Mo.	James	Rhodes, Pa.
Cole, N. Y.	Jarman	Riley
Condon	Javits	Robison, Ky.
Cooley	Jenkins	Rodino
Cooper	Jensen	Rogers, Colo.
Corbett	Johnson, Wis.	Rogers, Mass.
Coudert	Jonas, Ill.	Rooney
Cretella	Jones, Ala.	St. George
Crosser	Judd	Saylor
Crumpacker	Karsten, Mo.	Schenck
Cunningham	Kean	Scherer
Curtis, Mass.	Kearney	Scrivner
Curtis, Mo.	Kearns	Scudder
Dague	Keating	Secrest
Davis, Wis.	Kelley, Pa.	Seely-Brown
Dawson, Ill.	Kilburn	Selden
Deane	King, Calif.	Sheehan
Deaney	King, Pa.	Shelley
Dempsey	Kirwan	Sheppard
Derounian	Kluczynski	Sieminski
Devereux	Knox	Sikes
D'Ewart	Krueger	Simpson, Ill.
Dondero	Laird	Simpson, Pa.
Donohue	Lane	Small
Donovan	Latham	Smith, Miss.
	Lesinski	Spence
	Lovre	Springer
	McCarthy	Staggers
	McConnell	Stauffer
	McCormack	Steed
	McCulloch	Stringfellow

Talle	Vorys	Williams, N. J.
Thomas	Wainwright	Williams, N. Y.
Thompson, Mich.	Walter	Wilson, Calif.
Thornberry	Wampler	Wilson, Ind.
Toilefson	Warburton	Withrow
Trimble	Watts	Wolcott
Utt	Westland	Wolverson
Van Pelt	Wharton	Yates
Van Zandt	Wickersham	Young
Velde	Widnall	Younger
Vinson	Wier	Zablocki
	Wigglesworth	

## NAYS—36

Abernethy	Grant	Norrell
Alexander	Herlong	Rivers
Andrews	Hoffman, Mich.	Rogers, Fla.
Barden	Ikard	Rogers, Tex.
Burleson	Jonas, N. C.	Smith, Va.
Carlyle	Jones, Mo.	Smith, Wis.
Colmer	Jones, N. C.	Taber
Davis, Ga.	LeCompte	Teague
Dies	McMillan	Tuck
Dolliver	Mason	Whitten
Forrester	Matthews	Williams, Miss.
Gentry	Mills	Winstead

## ANSWERED "PRESENT"—2

Forand	Smith, Kans.
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## NOT VOTING—87

Albert	Gubser	Patten
Allen, Ill.	Harris	Patterson
Angell	Harrison, Va.	Perkins
Bentsen	Harrison, Wyo.	Pilcher
Berry	Harvey	Powell
Bonin	Heller	Preston
Bonner	Hillings	Radwan
Bow	Hinshaw	Regan
Buckley	Johnson, Calif.	Richards
Busbey	Kee	Riehlman
Camp	Kelly, N. Y.	Roberts
Carnahan	Keogh	Robeson, Va.
Chatham	Kersten, Wis.	Roosevelt
Coon	Kilday	Sadlak
Cotton	Klein	Scott
Curtis, Nebr.	Landrum	Shafer
Davis, Tenn.	Lanham	Short
Dingell	Lantaff	Shufford
Dodd	Lipscomb	Sullivan
Dollinger	Long	Sutton
Dowdy	Lucas	Taylor
Durham	Lyle	Thompson, La.
Ellsworth	McGregor	Thompson, Tex.
Evins	Metcaif	Vursell
Fallon	Morano	Weichel
Feighan	Moulder	Wheeler
Fisher	Norblad	Willis
Frazier	Passman	Wilson, Tex.
Golden	Patman	Yorty

So the bill was passed.

The Clerk announced the following pairs:

## On this vote:

Mr. Metcaif for, with Mr. Smith of Kansas against.

## Until further notice:

Mr. Allen of Illinois with Mr. Lantaff.  
 Mr. McGregor with Mr. Keogh.  
 Mr. Morano with Mr. Chatham.  
 Mr. Taylor with Mr. Klein.  
 Mr. Bow with Mrs. Sullivan.  
 Mr. Coon with Mrs. Kee.  
 Mr. Curtis of Nebraska with Mr. Shuford.  
 Mr. Cotton with Mr. Preston.  
 Mr. Golden with Mr. Lanham.  
 Mr. Gubser with Mr. Landrum.  
 Mr. Busbey with Mr. Fisher.  
 Mr. Hillings with Mr. Lucas.  
 Mr. Scott with Mr. Long.  
 Mr. Johnson of California with Mr. Lyle.  
 Mr. Bonin with Mr. Carnahan.  
 Mr. Berry with Mr. Pilcher.  
 Mr. Ellsworth with Mr. Willis.  
 Mr. Harrison of Wyoming with Mr. Thompson of Louisiana.  
 Mr. Harvey with Mr. Roberts.  
 Mr. Sadiak with Mr. Fallon.  
 Mr. Patterson with Mr. Bonner.  
 Mr. Short with Mr. Perkins.  
 Mr. Shafer with Mr. Moulder.  
 Mr. Angell with Mr. Roosevelt.  
 Mr. Riehlman with Mr. Harrison of Virginia.  
 Mr. Vursell with Mr. Heller.  
 Mr. Hinshaw with Mr. Buckley.



Mr. Radwan with Mr. Kilday.  
Mr. Norblad with Mr. Wilson of Texas.  
Mr. Welchel with Mr. Wheeler.  
Mr. Kersten of Wisconsin with Mr. Frazier.

Mr. SMITH of Kansas. Mr. Speaker, I voted "nay." I have a live pair with the gentleman from Montana, Mr. METCALF. I withdraw my vote "nay" and answer "present."

Mr. HOFFMAN of Michigan changes his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### U. S. S. "CONSTITUTION" AND OTHER HISTORICAL VESSELS

Mr. DEVEREUX. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 8247) to provide for the restoration and maintenance of the U. S. S. *Constitution* and to authorize the disposition of the U. S. S. *Constellation*, U. S. S. *Hartford*, U. S. S. *Olympia*, and U. S. S. *Oregon*, and for other purposes, with Senate amendments and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments as follows:

Page 3, line 4, strike out "subsection" and insert "sections 2 (c) and."

Page 3, line 16, strike out all after "vessel" down to and including "received" in line 18.

Page 5, line 4, strike out "in subsection 4 (a) and."

Page 5, lines 6 and 7, strike out "in his discretion, by sale or by scrapping."

Page 5, line 8, after "Secretary", insert "Any such vessel may be disposed of by sale or by scrapping, in the discretion of the Secretary."

Page 5, line 16, strike out "*Constellation*, *Hartford*, *Olympia*" and insert "*Olympia*."

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Senate amendments were concurred in, and a motion to reconsider was laid on the table.

#### AMENDING FOOD, DRUG, AND COSMETIC ACT WITH RESPECT TO RESIDUE OF PESTICIDE CHEMICALS

Mr. SPRINGER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 7125) to amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities, with a Senate amendment thereto and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 18, line 19, strike out "section," and insert "section."

"(o) The Secretary of Health, Education, and Welfare shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Secretary, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Secretary's functions under this section. Under such regulations,

the performance of the Secretary's services or other functions pursuant to this section, including any one or more of the following, may be conditioned upon the payment of such fees: (1) The acceptance of filing of a petition submitted under subsection (d); (2) the promulgation of a regulation establishing a tolerance, or an exemption from the necessity of a tolerance, under this section, or the amendment or repeal of such a regulation; (3) the referral of a petition or proposal under this section to an advisory committee; (4) the acceptance for filing of objections under subsection (d) (5); or (5) the certification and filing in court of a transcript of the proceedings and the record under subsection (i) (2). Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Secretary such waiver or refund is equitable and not contrary to the purposes of this subsection."

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Senate amendment was concurred in, and a motion to reconsider was laid on the table.

#### AMENDMENT TO MERCHANT MARINE ACT, 1936

Mr. TOLLEFSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 2408) to amend the Merchant Marine Act, 1936, to provide a national defense reserve of tankers and to promote the construction of new tankers, and for other purposes, with House amendments, insist on the House amendments and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Washington? [After a pause] The Chair hears none, and appoints the following conferees: Messrs. TOLLEFSON, ALLEN of California, SEELY-BROWN, BONNER, and SHELLEY.

#### ABOLISHING OFFICES OF ASSISTANT TREASURER AND ASSISTANT REGISTER OF THE TREASURY

Mr. REED of New York. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 3605) to abolish the offices of Assistant Treasurer and Assistant Register of the Treasury and to provide for an Under Secretary for Monetary Affairs and an additional Assistant Secretary in the Treasury Department.

The Clerk read the title of the bill.

Mr. REED of New York. Mr. Speaker, I ask unanimous consent to extend an explanation at this point in the RECORD.

Mr. COOPER. Mr. Speaker, reserving the right to object, and I shall not, I simply state that this bill was favorably reported by unanimous vote of the Committee on Ways and Means.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. REED of New York. Mr. Speaker, this legislation has been acted on favorably by the Senate. It was reported

to the House by the unanimous vote of the Ways and Means Committee.

Mr. Speaker, S. 3605 would abolish the office of Assistant Treasurer of the United States and the office of Assistant Register of the Treasury. It is pointed out that neither of these offices has been filled under the Eisenhower administration. Based on this experience it has been determined by the Treasury Department that they are unnecessary and the Secretary of the Treasury has requested that they be abolished.

The two primary responsibilities placed on the Secretary of the Treasury by the Congress are, first, the collection of revenue and the preparation of plans for the improvement and management of the revenue; and, second, the support of the public credit. It is desirable that the Secretary have under him two top officials of comparable rank on whom he can rely for assistance on these basic responsibilities. S. 3605 would authorize in the Department a new position of Under Secretary for Monetary Affairs to whom supervision of functions relating to debt management and monetary policies could be assigned. S. 3605 would also establish a new position of Assistant Secretary in addition to the two positions of Assistant Secretary presently authorized. This position is necessary to provide the Secretary of the Treasury with an assistant of sufficient rank to enable him to carry out most effectively a number of related duties recently assigned to the Secretary of the Treasury. These duties include the lending functions under section 302 of the Defense Production Act of 1950, the lending functions under section 409 of the Federal Civil Defense Act of 1950, the liquidation of assets and winding up of the affairs of the Reconstruction Finance Corporation and other similar responsibilities recently assigned to the Secretary of the Treasury.

The Clerk read the bill, as follows:

*Be it enacted, etc., That* (a) section 303 of the Revised Statutes, as amended (39 U. S. C. 143), establishing the office of Assistant Treasurer of the United States, and the act approved April 9, 1926 (31 U. S. C. 143a), designating the Deputy Assistant Treasurer as Assistant Treasurer, are repealed.

(b) Section 304 of the Revised Statutes, as amended (31 U. S. C. 144), is amended (1) by striking out "Treasurer may, in his discretion, and with the consent of the Secretary of the Treasury, authorize the Assistant Treasurer to act in the place and discharge any or all of the duties of the Treasurer of the United States; and the", and (2) by striking out "both the Treasurer and Assistant Treasurer" and inserting in lieu thereof "the Treasurer."

Sec. 2. Sections 314 and 315 of the Revised Statutes, as amended, and the joint resolution approved December 13, 1892 (31 U. S. C. 164, 165, and 166), establishing the office of Assistant Register of the Treasury, specifying the duties of the office, and providing for the appointment of an Acting Assistant Register, are repealed.

Sec. 3. The provision in the act of February 17, 1922, which established the office of Under Secretary of the Treasury, as amended and supplemented (5 U. S. C. 244), is amended to read as follows:

"There shall be in the Department of the Treasury an Under Secretary and an Under Secretary for Monetary Affairs, each to be appointed by the President, by and with the







Public Law 518 - 83d Congress

Chapter 559 - 2d Session

H. R. 7125

AN ACT

All 68 Stat. 511.

To amend the Federal Food, Drug, and Cosmetic Act with respect to residues of pesticide chemicals in or on raw agricultural commodities.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 201 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new paragraphs: Pesticide chemical residues.  
52 Stat. 1041.

“(q) The term ‘pesticide chemical’ means any substance which, alone, in chemical combination or in formulation with one or more other substances, is an ‘economic poison’ within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U. S. C., secs. 135–135k) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities. 21 USC 321.  
Definitions.  
61 Stat. 163.

“(r) The term ‘raw agricultural commodity’ means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.”

SEC. 2. Clause (2) of section 402 (a) of the Federal Food, Drug, and Cosmetic Act is amended to read as follows: “(2) if it bears or contains any added poisonous or added deleterious substance, except a pesticide chemical in or on a raw agricultural commodity, which is unsafe within the meaning of section 406, or if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a);”. Adulterated food.  
21 USC 342.  
21 USC 346.

SEC. 3. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new section:

“TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

“SEC. 408. (a) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of clause (2) of section 402 (a) unless— 21 USC 342.

“(1) a tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by the Secretary of Health, Education, and Welfare under this section and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

“(2) with respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance by the Secretary under this section.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of section 402 (a).

“(b) The Secretary shall promulgate regulations establishing tolerances with respect to the use in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals which are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In establishing any such regulation, the Secretary shall give appropriate consideration, among other relevant factors, (1) to the Establishment of tolerances.

All 68 Stat. 512.

necessity for the production of an adequate, wholesome, and economical food supply; (2) to the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (3) to the opinion of the Secretary of Agriculture as submitted with a certification of usefulness under subsection (1) of this section. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section. In carrying out the provisions of this section relating to the establishment of tolerances, the Secretary may establish the tolerance applicable with respect to the use of any pesticide chemical in or on any raw agricultural commodity at zero level if the scientific data before the Secretary does not justify the establishment of a greater tolerance.

Exemptions.

"(c) The Secretary shall promulgate regulations exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on any or all raw agricultural commodities when such a tolerance is not necessary to protect the public health. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section.

Procedure pursuant to petition.

7 USC 135 note.

"(d) (1) Any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Secretary of Health, Education, and Welfare, a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of, such economic poison, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing—

Petition data.

"(A) the name, chemical identity, and composition of the pesticide chemical;

"(B) the amount, frequency, and time of application of the pesticide chemical;

"(C) full reports of investigations made with respect to the safety of the pesticide chemical;

"(D) the results of tests on the amount of residue remaining, including a description of the analytical methods used;

"(E) practicable methods for removing residue which exceeds any proposed tolerance;

"(F) proposed tolerances for the pesticide chemical if tolerances are proposed; and

"(G) reasonable grounds in support of the petition.

Notice.

Samples of the pesticide chemical shall be furnished to the Secretary upon request. Notice of the filing of such petition shall be published in general terms by the Secretary within thirty days after filing. Such notice shall include the analytical methods available for the determination of the residue of the pesticide chemical for which a tolerance or exemption is proposed.

Regulation.

"(2) Within ninety days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, the Secretary of Health, Education, and Welfare shall, after giving due consideration to the data submitted in the petition or otherwise before him, by order make public a regulation—

"(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful, or

"(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes,

Exemption.

unless within such ninety-day period the person filing the petition requests that the petition be referred to an advisory committee or the

Secretary within such period otherwise deems such referral necessary, in either of which events the provisions of paragraph (3) of this subsection shall apply in lieu hereof.

"(3) In the event that the person filing the petition requests, within ninety days after a certification of usefulness by the Secretary of Agriculture under subsection (1) with respect to the pesticide chemical named in the petition, that the petition be referred to an advisory committee, or in the event the Secretary of Health, Education, and Welfare within such period otherwise deems such referral necessary, the Secretary of Health, Education, and Welfare shall forthwith submit the petition and other data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal in the petition to the Secretary, together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary shall, after giving due consideration to all data then before him, including such report, recommendations, underlying data, and statement, by order make public a regulation—

"(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful; or

"(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes.

"(4) The regulations published under paragraph (2) or (3) of this subsection will be effective upon publication.

"(5) Within thirty days after publication, any person adversely affected by a regulation published pursuant to paragraph (2) or (3) of this subsection, or pursuant to subsection (e), may file objections thereto with the Secretary, specifying with particularity the provisions of the regulation deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. A copy of the objections filed by a person other than the petitioner shall be served on the petitioner, if the regulation was issued pursuant to a petition. The petitioner shall have two weeks to make a written reply to the objections. The Secretary shall thereupon, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7 (c) of the Administrative Procedure Act (5 U. S. C., sec. 1006 (c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and by order make public a regulation. Such regulation shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reasons certified to the Secretary by an



All 68 Stat. 514.

advisory committee, and shall set forth detailed findings of fact upon which the regulation is based. No such order shall take effect prior to the ninetieth day after its publication, unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

Secretary's proposals, etc.

7 USC 135 note.

"(e) The Secretary may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Secretary may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Secretary shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) of subsection (d).

Confidential data.

"(f) All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until publication of a regulation under paragraph (2) or (3) of subsection (d) of this section. Until such publication, such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section.

Advisory committees.

Members.

Compensation.

"(g) Whenever the referral of a petition or proposal to an advisory committee is requested under this section, or the Secretary otherwise deems such referral necessary the Secretary shall forthwith appoint a committee of competent experts to review the petition or proposal and to make a report and recommendations thereon. Each such advisory committee shall be composed of experts, qualified in the subject matter of the petition and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their

places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee. Clerical assistance, etc.

“(h) A person who has filed a petition or who has requested the referral of a proposal to an advisory committee in accordance with the provisions of this section, as well as representatives of the Department of Health, Education, and Welfare, shall have the right to consult with any advisory committee provided for in subsection (g) in connection with the petition or proposal. Consultation right.

“(i) (1) In a case of actual controversy as to the validity of any order under subsection (d) (5), (e), or (1) any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. Appeals. Judicial review.

“(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith served upon the Secretary, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Upon such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee.

“(3) In the case of a petition with respect to an order under subsection (1), a copy of the petition shall be forthwith served upon the Secretary of Agriculture, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the proceedings and the record on which he based his order. Upon such filing, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

“(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary of Health, Education, and Welfare or the Secretary of Agriculture, as the case may be, may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

“(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a 62 Stat. 928.

stay of an order. The courts shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

Temporary toler-  
ances.  
7 USC 135 note.

“(j) The Secretary may, upon the request of any person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act or upon his own initiative, establish a temporary tolerance for the pesticide chemical for the uses covered by the permit whenever in his judgment such action is deemed necessary to protect the public health, or may temporarily exempt such pesticide chemical from a tolerance. In establishing such a tolerance, the Secretary shall give due regard to the necessity for experimental work in developing an adequate, wholesome, and economical food supply and to the limited hazard to the public health involved in such work when conducted in accordance with applicable regulations under the Federal Insecticide, Fungicide, and Rodenticide Act.

Regulations  
prior to  
Jan. 1, 1953.  
21 USC 346, 371.

“(k) Regulations affecting pesticide chemicals in or on raw agricultural commodities which are promulgated under the authority of section 406 (a) upon the basis of public hearings instituted before January 1, 1953, in accordance with section 701 (e), shall be deemed to be regulations under this section and shall be subject to amendment or repeal as provided in subsection (m).

Authority of  
Secretary of  
Agriculture.  
7 USC 135 note.

“(l) The Secretary of Agriculture, upon request of any person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d) (1) with respect to a pesticide chemical which constitutes, or is an ingredient of, such economic poison, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Secretary deems it necessary to postpone action for such period, on the basis of data before him, either—

“(1) certify to the Secretary of Health, Education, and Welfare that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

“(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Secretary of Agriculture takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Secretary may by order make the certification as proposed. In the event that the action described in clause (A) or (C) is taken, the Secretary shall by order make the certification as proposed with respect to such parts thereof as are requested. If the event a hearing is requested, the Secretary of Agriculture shall provide opportunity for a prompt hearing. The certification of the Secretary of Agriculture as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Secretary of Agriculture exceed one hundred and sixty days. The Secretary shall submit to the Secretary of Health,

Hearing.

68 Stat. 516.  
68 Stat. 517.

Time limita-  
tion.

Opinion.



Education, and Welfare with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Secretary of Agriculture, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection. Regulations, etc.

"(m) The Secretary of Health, Education, and Welfare shall prescribe by regulations the procedure by which regulations under this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of regulations establishing tolerances, including the appointment of advisory committees and the procedure for referring petitions to such committees. HEW procedure for regulation amendment.

"(n) The provisions of section 303 (c) of the Federal Food, Drug, and Cosmetic Act with respect to the furnishing of guaranties shall be applicable to raw agricultural commodities covered by this section. Guaranties. 21 USC 333.

"(o) The Secretary of Health, Education, and Welfare shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Secretary, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Secretary's functions under this section. Under such regulations, the performance of the Secretary's services or other functions pursuant to this section, including any one or more of the following, may be conditioned upon the payment of such fees: (1) The acceptance of filing of a petition submitted under subsection (d); (2) the promulgation of a regulation establishing a tolerance, or an exemption from the necessity of a tolerance, under this section, or the amendment or repeal of such a regulation; (3) the referral of a petition or proposal under this section to an advisory committee; (4) the acceptance for filing of objections under subsection (d) (5); or (5) the certification and filing in court of a transcript of the proceedings and the record under subsection (i) (2). Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Secretary such waiver or refund is equitable and not contrary to the purposes of this subsection." Payment of fees. pro-waiver or refund.

SEC. 4. There are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose and administration of this Act. Appropriation.

SEC. 5. This Act shall take effect upon the date of its enactment, except that with respect to pesticide chemicals for which tolerances or exemptions have not been established under section 408 of the Federal Food, Drug, and Cosmetic Act, the amendment to section 402 (a) of such Act made by section 2 of this Act shall not be effective— Effective dates. Ante, p. 21 USC 342.

(1) for the period of one year following the date of the enactment of this Act; or

(2) for such additional period following such period of one year, but not extending beyond two years after the date of the enactment of this Act, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period.

Approved July 22, 1954.







